

Exhibit 20

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Received

OCT 08 2013

By:

Whitestone Construction Corp.

WCC 000865

F. J. Sciamé Construction Co., Inc.

CUNY NYCCT New Academic Building

285 Jay Street

Brooklyn, NY 11201

The City University of New York

Package: Exterior Wall Systems

Addendum 01 - 02.25.13

BID BOOKLET**F.J. SCIAME CONSTRUCTION CO., INC.
TRADE SCOPE CHECKLIST**

PROJECT:	CUNY NYCCT New Academic Building	
TRADE:	Exterior Wall Systems	
CONTRACTOR:		
ADDRESS:		
CITY / STATE / ZIP:		
TELEPHONE:		
EMAIL ADDRESS:		
FAX:		
CONTACT:		
SIGNATURE (CHECKLIST REVIEWED AND ACCEPTED BY):	DATE:	
NOTE:		
F/I = Furnish and Install (Note: All items are F/I unless specifically noted otherwise)		
ITEM	DESCRIPTION	Y / N
THE FOLLOWING ITEMS ARE AGREED TO BY EXTERIOR WALL SYSTEMS CONTRACTOR:		
GENERAL REQUIREMENTS:		
1	All work as per the Drawings and Specification logs provided with the Bid Booklet (and subsequent addenda, if applicable).	Y
2	Carefully reviewed all site conditions to understand existing conditions for this project; any cost impact associated with same has been factored into the estimate. Site conditions are confirmed and accepted.	Y
3	Comply with FJ Sciamé Contract, including Rider A and Rider B documents.	Y
4	Acknowledge and understand requirements for Liquidated Damages per Article 9 of the Subcontract Agreement.	Y
5	Union labor as per NYC Jurisdictional Requirements, and as outlined in the project PLA.	Y
6	Should jurisdictional disputes arise among the trades present at the job site regarding items of work included in this contract, it is this subcontractor's responsibility to resolve such disputes promptly and arrange for the installation of the work covered under this contract so as not to cause any delay to the overall schedule, at no additional cost to the Owner and or Construction Manager.	Y
7	Addenda and Bid RFIs that affect this scope of work have been included in this pricing and listed in the Bid Form.	Y
8	Provide unit pricing and hourly labor rates. See bid form worksheet. Unit prices/labor rates will be held for the duration of the project.	Y
9	Provide breakout pricing as listed in the bid form worksheet.	Y
10	Base contract scope of work factors in all labor and material escalations through Project Completion (2016).	Y
11	Contractor shall participate in all project reviews as per the attached specifications.	Y
12	It is the responsibility of the subcontractor to review and apprise themselves of any field conditions present prior to the award of this contract. Should inconsistencies exist between the work already installed and the contract documents that could result in additional work for this trade, it is the subcontractor's responsibility to immediately bring such information to the attention of the General Contractor so that it may be incorporated as part of this contract. Failure to do so shall not result in any additional cost to the Owner or General Contractor for field conditions existing at the time of contract award. Any existing field conditions that are not brought to the attention of the General Contractor prior to contract award are considered to be included in this scope.	Y
13	It is understood that based on the documents listed above, site walkthroughs and any other information transmitted to this contractor regarding the work of this trade represents any and all work required to fulfill the scope of this trade. Any work that is "reasonably inferable" from the information that is known to date is hereby included in this contract and will not be subject to any contract adjustment.	Y
14	Provide center piling of all debris to be removed by others. All materials to be left in manageable sizes (3 feet or less in size) for removal.	Y
15	Provide final cleaning of all work of this trade upon completion of the project.	Y
16	Provide all Performance Requirements for the exterior wall systems as indicated on the contract drawings.	Y

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TRADE SCOPE CHECKLIST**

17	Provide PE certification (in the form of stamped drawings and calculations) for any shoring and bracing procedures that will be implemented during the course of work.	Y
18	Provide all permits, filings and notifications required for the work of this trade and pay all associated fees for the work of this trade.	Y
19	Submit a detailed list of all the required submittals for this scope of work, per the contract documents, and is to include the dates (in calendar days) that each of these submissions will be made. This Contractor agrees to submit this "Submittal Schedule" to Sciamè within two weeks of being awarded the project for review and approval.	Y
20	Provide Master Mechanic and Master Foreman if required by any relevant labor regulation due to the manpower size used during the scope of this trade only.	Y
21	Provide all scaffolding, and rigging, etc. as required for the work of this trade.	Y
22	Provide and maintain all temporary power, water and sewer utilities required for the scope of this trade.	Y
23	Provide all necessary noise mitigation. Comply with DEP Construction Noise Mitigation Plan, Title 15 Chapter 28 RCNY.	Y
24	Project is striving to achieve LEED SILVER certification. The job must conform to all LEED SILVER requirements including but not limited to recycling of materials, material tracking etc.	Y
25	Provide all field measuring, layout, templates, etc. as required for the work of this trade. Sciamè to provide Axis lines and Benchmarks.	Y
26	Provide fire watch when burning, cutting and rigging, etc. as required for the work of this trade.	Y
27	Provide all code required signage pertaining to the scope of their work, if required.	Y
28	This project is sales tax exempt.	Y
29	Perform all deliveries and storage per regulations of the project. Coordinate all deliveries and storage of material with CM.	Y
30	Additional work requests (ASIs or other) will be priced and responded to by this subcontractor within (5) working days. Complete breakdowns of pricing to be furnished. If there are no claims within (5) working days Sciamè will assume no cost to schedule impact to the project.	Y
31	Provide all supports, anchors and suspensions for all work of your trade as specified or as required for a complete installation.	Y
32	Any information pertaining to this RFB and project must be made in writing only to Sciamè and no other party.	Y
33	Coordinate the work of this trade with all other trades and consultants. If work is installed before coordinating with other trades, make necessary changes to work to correct the condition without additional costs to the owner.	Y
34	Modifying any gates and entry areas if required to facilitate your work will be this trade's responsibility. This trade accepts the site logistic plan as is. Any modification to facilitate your work will be this trade's responsibility.	Y
35	Provide all submittals and shop drawings as required per contract documents and specifications including "Record" submittal at the end of job.	Y
36	Provide the requested CCIP alternate pricing - Reference Section IV, Item B in the Bid Booklet "Subcontractor Insurance Requirements - CCIP."	Y
37	When invited, it is mandatory that you or a knowledgeable representative acceptable to the Sciamè PM attend weekly job site coordination meetings. Failure to attend will result in a \$500.00 reduction in contract price to compensate for the delays caused. Each subsequent occurrence will incur a separate \$500.00 reduction in contract price.	Y
38	Requests for information to be submitted in writing to CM. Reasonable time frames will be allowed for response by CM and/or Project Consultants.	Y
39	Where conflicts occur between drawings and specifications, or within either document, the Contractor shall ask for and obtain written clarification from the Architect prior to submitting his bid. Otherwise the items and arrangements of superior quality, greater quality or higher cost shall prevail and be included in the contract price.	Y
40	Items not shown on drawings but mentioned in the specifications, or vice versa, necessary to render the work complete, shall be provided without additional costs to the owner.	Y
41	Provide all shop drawings, product submittals, details, calculations and samples, etc. as specified and/or required to complete the scope of this work.	Y
42	Provide all materials to conform to with the requirements of the current editions of ASTM and other specifications and standards as indicated.	Y
43	All extra work done on ticket shall include no more than one (1) hour per day billable for field foreman time.	Y
44	Inspect all materials furnished by others and notify GC with 48 hours of any damage.	Y

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SAFETY REQUIREMENTS:	
45	Subcontractors (all tiers) have the responsibility of providing properly trained and qualified employees in accordance with all Federal, State and Local Safety and Health Standards. It is their responsibility to ensure that all work is performed in accordance with Federal, State, Local and client established safety standards and codes. Subcontractors at this site must provide employees with a work place free of recognized hazards. All workers at this site must work safely and report all accidents, incidents and potential safety hazards immediately to their supervisor and then to the Site Safety Manager / Superintendent. The safety of workers, client employees and the general public will not be compromised for any reason.
46	Provide protection work as required including but not limited to:
a	Provide OSHA protection as it pertains to the work of your trade.
b	Provide OSHA fall protection as required and comply with on-site safety advisor's requests with regards to full protection and its maintenance during the project (worker fall protection must comply with section S.2.c).
c	If required, provide flagman and traffic control during unloading, loading, and hoisting of material. Provide any required material for traffic control work / lane closures - flags, cones, jersey barriers, etc.
d	Provide workers' certification of fall protection training.
e	Protect existing asphalt roadway(s) during scope of work. Any summons incurred due to DOT and/or DEP citations due to the lack of protection or adherence with permit regulations will be the responsibility of this subcontractor.
47	Omitted (Repeat of Item 14).
48	Adhere to the following safety requirements:
a	All requirements as set forth in the Sciamé Corporate Safety Manual, acknowledgement of review required by Sciamé prior to commencement of work.
b	All subcontractors to submit their Corporate Safety Policy and Site Specific Safety Plan to Sciamé prior to commencement of work.
c	All subcontractors to submit daily job meetings (same day) to Safety Coordinator.
d	All subcontractors shall comply with the guidelines set forth in Chapter 33/Local Law 52 pertaining to all facets of supported scaffolding.
e	All subcontractors to submit ladder inspections performed by your 'Competent Person' at the start of each day. Any ladder deemed defective by the 'Competent Person' will be removed by On-Site Safety Coordinator or Sciamé personnel.
f	Audio equipment (i.e. radios, mp3 players, etc.) are not permitted on site.
g	All activities require a written JHA (Job Hazard Analysis) and THA (Task Hazard Analysis) submitted for approval to Sciamé in accordance with the JHA/THA policy and procedures included in the Bid Booklet.
h	Conduct and document Daily Safety Tool Box meetings.
i	Comply with all necessary aspects of chapter 33 of NYC Building Code.
j	Provide full-time on-site safety manager throughout work of this trade.
k	Provide safety prequalification form included with bid documents (reference "Supplemental Information Items"). Safety prequalification of all sub-tier subcontractors is also required upon request.
l	Sciamé may implement a Substance Abuse Testing Program for all workers that will include: Pre-employment testing, random testing and post accident testing.
PROJECT SCHEDULE ITEMS:	
49	Perform work in multiple phases according to project schedule, this scope checklist and logistics plans provided with bid package. Any proposed change in the logistics/phasing provided in this bid package, which must be approved by the CM, must not result in delay or added cost to this trade or any other trade.
50	Provide a detailed schedule of work, including mobilization, lead times, milestones, etc. within (2) weeks of award.
51	Provide lead times for all materials to be used in this scope of work.
52	Provide a schedule of critical delivery dates.
53	The project is adjacent to an active High School and University Dormitory. The expectation of all Subcontractors is to be sensitive to the schools needs during exam periods by minimizing any potentially disruptive work during these periods.
54	Provide any overtime, supervision, manpower, material, tools or equipment to allow for other trades to have adequate time to complete by the project completion date. Contractor agrees to an increase in manpower if requested by the CM if the schedule is at risk due to reasons caused by this Contractor.
55	Provide full phasing and logistics plan for all work.

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56	Pricing includes comebacks due to the coordination and sequencing of other work, such as: infill of the hoist run, entry doors, ground floor glass, etc.	Y
57	Contractor agrees to incorporate reasonable change order requests by the Owner into the Project Schedule.	Y
58	Hours of work to be on Monday through Friday from the hours of 7:00 a.m. to 3:30 p.m. (8 hr Standard day). The site is available for work on Saturday and Sunday. Weekend work must be approved by the NYC DOB and scheduled with CM at least five days in advance.	Y
STANDARD REQUIREMENTS:		
59	Provide all shop drawings, detail drawings, product submittals, structural calculations, thermal analysis, LEED, samples, sound transmission analysis, product test reports and warranties as indicated on the contract documents.	Y
60	Provide all closeout documents (as-builts, O&M Manual, façade maintenance booklet, maintenance material, attic stock) as indicated on the contract documents.	Y
61	Provide Performance Requirements as indicated in the contract documents.	Y
62	Provide all Design Requirements as indicated in the contract documents.	Y
63	Provide all warranties as indicated in the contract documents.	Y
64	Provide verification of all dimensions, rough openings are level and plumb and examination of surface of openings prior to installation.	Y
65	Furnish, install and provide all materials required for the "Performance Mock-Up - Glazed Aluminum Curtain Wall and Structural Glass Curtain Wall" as shown on contract documents and per the following specifications, including but not limited to:	Y
a.	Provide Performance Mock-Up as shown in the contract specifications.	Y
c.	Provide support for the curtain wall during the test to simulate support characteristics of the actual support structure inclusive of Window Washing Rig Loads and Attachment buttons.	Y
66	Provide P.E. engineered and stamped drawings for structural review for all scope. Provide calculations for review coordinated with PE stamped drawings.	Y
67	Repair or replace any damaged material (if by this trade). Replacement must be done in a timely manner and in the event that sequence of work is dependent on materials which have been damaged, all means necessary (i.e. Overtime, expedited shipping, re-allocation of materials on a priority basis, etc.) will be employed at this contractor's expense.	Y
68	Provide replacement with new material of any excessively damaged material as determined by the Architect. Samples must be performed to demonstrate workmanship and color uniformity. Architect must review and approve sample prior to proceeding with other touch-up areas.	Y
69	Provide all insulation and firesafing as specified and as required by NYC code for the installation of a complete curtain wall system. Furnish and install fire safing at all perimeter slab edges, as required. Inclusive of metal closure pieces, acoustical caulking and retaining clips at slab edges. typical of 5/A-335	Y
70	Pricing includes all substrate boards and moisture/vapor barriers required for the scope of this work.	Y
71	Pricing includes all flashing and trim required for the scope of this work. All waterproofing and flashing that ties this system to other systems is to be the scope of this trade	Y
72	It is understood that all Mechanical or Welded attachments necessary for the installation of the work of this trade is the responsibility of this contractor.	Y
73	Provide all survey and layout relating to the work of your trade for all exterior wall systems.	Y
74	This contractor is to provide the embeds and a layout drawing for all of the embeds required for their façade systems to be installed by the concrete sub contractor. This contractor to coordinate the installation of these embeds and confirm that the embeds are installed correctly before the concrete is poured.	Y
75	This contractor is responsible for the installation of all Welded Anchors and Embeds that are not set within the concrete and metal decking.	Y
76	This contractor is responsible for cutting of all pour stop and decking at all embeds and anchor supports as required, relative to this scope of work.	Y
77	Furnish and install façade and curtain wall systems in compliance with required codes and building standards.	Y
78	Provide all required jurisdictional labor and execution of work by this trade. Sciamé to provide cleanup and hoist operator.	Y
79	Remove all spray fireproofing in select areas as required to implement the work of this trade. (not required to repair/replace).	Y
80	Provide touch-up / final touch-up in strict accordance with paint manufacturer's written instructions and as required in the contract documents.	Y

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81	Furnish, install and provide all materials for "In-Place Mock-Ups" as indicated on contract documents and as noted within the Construction Documents for all wall systems.	Y
a.	Provide minimum of three modules wide by not less than one story high or as noted in the specifications.	Y
82	Provide all quality plan and test reports to monitor quality of cleaners, primers, silicone sealant, workmanship and adhesion of silicone sealant works.	Y
83	Furnish and Install all materials for "Visual Mock-Ups" after acceptance of Performance Mockup and prior to construction of In-Place Mockup as indicated in the contract documents. Typical for all Wall Systems.	Y
84	Furnish, install and provide all materials for "In-Place Mock-Ups" as indicated in the contract documents and the following specification, including but not limited to:	Y
a.	Provide a minimum of three modules wide by not less than one story high in two areas designated by the architect:	Y
i.	Provide at typical portion of the wall.	Y
ii.	Provide at curved roof of the Auditorium and shall include the interface with the curved roof.	Y
85	Provide all product data required for the mockups as indicated in the contract documents.	Y
86	Provide all mock-up testing as required and remedial work, including replacement and re-installation of entire mock-up curtain wall system if required, in the event that performance tests fail and materials/systems cannot be corrected, as noted in the specifications.	Y
87	Provide all welding certificates.	Y
88	Provide all testing, test reports, quality control reports and field quality control reports.	Y
89	Furnish, install and provide all materials required to produce a "Testing Laboratory Mock-up" for all wall systems as indicated in the Construction Documents, including but not limited to:	Y
a.	Provide full size mock-up in size directed by testing laboratory and Curtain wall Consultant to show connection and construction techniques, windows, corners including sealants and insulation, etc.. Locate at certified independent testing laboratory as selected by Owner. This contractor to provide list of Testing Laboratories for Owner Consideration.	Y
b.	Testing Lab Costs, Shipping/ transport of mock ups shall be covered by this contractor for all wall systems noted in the Construction documents.	Y
90	Provide verification of field measurements before fabrication and indicate measurements on shop drawings.	Y
90.5	Provide protective film on all curtain wall elements (glass and metals) to prevent scratching/ damages during shipping, staging and installation.	Y
91	Provide protection and cleaning upon completion of all wall types to allow for punchlist and visual inspection. The removals of temp protection films on the interior and exterior of all window systems is the scope of this trade. Please note that the removal of the temporary Protective interior film is to be done at the substantial completion of the interior finishes.	Y
92	Scope of this trade is to include caulking/sealants from all furnished systems to adjacent furnished systems	Y
93	Scope of this trade is to include caulking/sealants from all furnished systems to neighboring systems by others. Inclusive of Stone, Brick, Glass, Metals and adjacent building structures where required.	Y
94	Pricing includes all clips, fasteners, connection devices and anchors required for the scope of this work.	Y
95	Pricing includes all integrated signage coordination required per the contract documents.	Y
96	Pricing includes all louvers and vents required per the contract documents.	Y
PROJECT REQUIREMENTS - TERRA COTTA WALL (TYPE 1B, 1C, 2):		
97	Provide all Terracotta Systems as shown on the contract drawings including but not limited to the following:	Y
a.	Provide Terracotta Wall (Wall Type 2) as per the contract drawings.	Y
b.	Provide Terracotta Baquettes at Louvered Wall (Wall Type 1B) as per the contract drawings.	Y
c.	Provide Terracotta Baquettes at Fritted Spandrel Glass Wall (Wall Type 1C) as per the contract drawings.	Y
d.	Provide all Terracotta Base as indicated in the contract documents.	Y
e.	Furnish and Install all Louver Systems as part of this assembly, inclusive of screens, blank off panels as noted in the Construction Documents inclusive of A-300 to A-302 and A-327.	Y
f.	Furnish and Install all Insulation, waterproofing and sealants as noted in the Construction Documents as part of a complete functional wall system as noted in the Contract Documents.	Y

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Addendum #1 - 02.25.13

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TRADE SCOPE CHECKLIST**

PROJECT REQUIREMENTS – GLAZED ALUMINUM CURTAIN WALL: (TYPE 1A, 1B, 1C, 3, 4A, 4B, 5, 6, 7, 8, 9, 13)		
98	Furnish, install and provide all materials for "Semi-Unitized Systems and Unit Systems" as indicated on the contract documents, including but not limited to:	Y
a.	Wall Type 1A - Aluminum Glass Curtain Wall, Unit System with Operable units and colored spandrels as noted.	Y
b.	Wall Type 1B - Louver Wall with Terra Cotta Baguettes, Unit System as noted	Y
c.	Wall Type 1C - Fritted Spandrel Glass wall with Terra Cotta Baguettes, Unit System. Inclusive of all Aluminum joint covers/ clip covers, sill covers as noted on A-342, typical.	Y
d.	Wall Type 5 - Aluminum Soffit, Pressure Equalized Exterior Soffit System	Y
e.	Wall Type 6 - Stainless Steel and Glass Canopy, Stainless Steel Framing with Point Support Glass	Y
f.	Wall Type 7 - Aluminum Auditorium Fascia and Soffit, Aluminum Panel System.	Y
g.	Wall Type 8 - Aluminum or Steel Clad in Aluminum Curtain Wall, Semi-Unitized or Unit System	Y
h.	Wall Type 9 - Stainless Steel Cladding, Metal Panel System	Y
i.	Wall type 13 - Composite Metal Panel Wall System as noted in the Construction documents	Y
99	Provide verification of actual locations of structural supports for curtain wall systems by field measurements before installation.	Y
100	Provide all aluminum finishes as required in the contract documents. Inclusive of ALI Extruded Aluminum Covers as noted in the Contract Documents	Y
101	Provide the following glazing types as per the contract documents (ref. A-320 thru A-326).	Y
G1	Typical vision glass (WT-1A & 8) - 5/16" thick heat strengthened with low-e + 1/2" air space + 5/16" thick heat strengthened insulated glass.	Y
G2	Typical spandrel glass (WT-1C & WT-1A at Pier Blank off Panel) 5/16" thick heat strengthened monolithic glass.	Y
G3	Fritted vision glass (WT-1A & 8)/fritted spandrel glass (WT-1A & 8 w/ shadow box) - 5/16" thick heat strengthened with low-e + 1/2" air space + 5/16" thick heat strengthened insulated glass with frit.	Y
G-4	Lobby vision glass - 5/16" thick heat strengthened with low-e + 1/2" air space + 3/4" thick heat strengthened insulated glass.	Y
G-4A	Lobby vision glass (bottom first panels) 5/16" thick fully tempered with low-e + 1/2" air space + 3/4" thick fully tempered insulated glass.	Y
G-5	Lobby glass fin (WT-3) 1/2" thick fully tempered + 1/16" PVB interlayer + 1/2" thick fully tempered laminated glass.	Y
G-6	Lobby corner glass fin (WT-3) 1/2" fully tempered + 1/16" PVB interlayer + 1/2" thick fully tempered 1/16" PVB interlayer + 1/2" thick fully tempered double laminated glass.	Y
G-7	Channel glass with insulation (WT-4A) fully tempered channel glass with insulation.	Y
G-8	Channel glass without insulation (WT-4B) fully tempered channel glass without insulation.	Y
G-9	Glass canopy (WT-6) 1/2" thick fully tempered + 1/16" Sentry glass interlayer + 1/2" thick fully tempered laminated glass.	Y
G-10	Tempered vision glass (WT-1A along grids 1-3, WT-8 at 10' above FFL east elevation & entrances) 5/16" thick fully tempered with low-e + 1/2" air space + 5/16" thick fully tempered insulated glass.	Y
G-11	Tempered fritted spandrel glass (WT-1A along grids 1-3 and WT-8 at 10' above FFL east elevation) 5/16" thick fully tempered with low-e + 1/2" air space + 5/16" thick fully tempered insulated glass with frit.	Y
G-12	Tempered spandrel glass (WT-1A at pier blank off panels along grids 1-3) 5/16" thick fully tempered monolithic glass.	Y
102	Provide curtainwall and roof support, including but not limited to the following:	Y
a.	Insulated glass wall and channel glass transition at west elevation.	Y
b.	Steel channel headers glass between columns.	Y
c.	Field welded steel kickers.	Y
e.	Lobby Glass Fin Wall supports as shown on Drawings A-353.	Y
f.	Continuous steel tube support outriggers and kickers for support of Lobby Terracotta wall.	Y
g.	Kicker tube support at Operable Windows Sills at Wall type 8.	Y
PROJECT REQUIREMENTS – STRUCTURAL GLASS CURTAINWALL: (TYPE 3)		

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TRADE SCOPE CHECKLIST**

103	Furnish, install and provide all materials for "All Glass wall, Glass mullion Wall with Point Supported Glazing (Wall Type 3)" as indicated in the contract documents.	Y
a.	Provide all stainless steel nodes and hardware at glass-to-glass system interface including gaskets as indicated in the contract documents and required for completion of installation.	Y
b.	Provide all stainless steel covers, exterior stainless steel perimeter enclosures, and exterior decorative stainless steel roof curb as indicated in the contract documents and required for completion of installation.	Y
c.	Provide all perimeter metal closures/channels/flashing including sealant, waterproofing membranes etc. as indicated in the contract drawings and required for completion of installation.	Y
d.	Provide all miscellaneous anchors, fasteners, adhesives, insulation, vapor barrier, sealants, and related accessories as indicated in the contract documents and required to complete installation.	Y
PROJECT REQUIREMENTS – CHANNEL GLASS WALL ASSEMBLIES (TYPE 4A, 4B):		
104	Furnish, install and provide all materials for "Channel Glass Wall" as indicated on the contract documents, including but not limited to:	Y
a.	Furnish, install and provide all materials for "Channel Glass Wall - Academic Building (Wall Type 4A)" as indicated in the contract documents.	Y
b.	Furnish, install and provide all materials for "Channel Glass Wall - Auditorium (Wall Type 4B)" as indicated in the contract documents.	Y
c.	Provide Translucent Linear Glass as shown on the contract drawings.	Y
i.	Provide Wall Type 4B - Channel Glass Wall (auditorium) at exterior wall.	Y
ii.	Provide Wall Type 4B - Channel Glass Wall (auditorium) at interior wall within lobby.	Y
d.	Provide all glass required to complete installation as shown on contract documents.	Y
e.	Provide all metal panels, metal closures, framing, flashings, exterior soffits, fascias, finishes, and accessories required to complete installation.	Y
f.	Provide all thermally broken aluminum channel glass framing as indicated on contract documents.	Y
g.	Provide all glazing accessories required.	Y
h.	Provide all miscellaneous anchors, fasteners, adhesives, insulation, vapor barrier, sealants, and related accessories as required.	Y
i.	Provide all stainless steel cladding at base of wall as required and indicated on contract documents.	Y
j.	Provide engineering design of channel glass wall and assemblies, including signed and stamped structural calculations of wall system.	Y
PROJECT REQUIREMENTS – ALUMINUM-FRAMED FOLDING WALL (TYPE 10):		
105	Furnish and Install all "Aluminum Framed Folding Wall System" as shown on contract documents and per the following specifications, including but not limited to:	Y
a.	Furnish, install and provide all materials for "Aluminum Framed Folding Wall System (Type 10)" as per contract documents.	Y
b.	Provide Nana wall Systems, Inc., Nana Wall SL-70 Series aluminum-framed wall system, or equivalent.	Y
c.	Provide all frames and panels required for the completion of installation.	Y
d.	Provide all glass required for the completion of installation.	Y
e.	Provide all hardware (sliding/folding hardware, interior and exterior locking hardware and handles, weather stripping) required for the completion of installation.	Y
f.	Provide all accessories (sidelites, transoms, single or double doors) required for the completion of installation as indicated on the contract documents.	Y
PROJECT REQUIREMENTS – ALUMINUM FRAMED ENTRANCES AND STOREFRONTS: (TYPE 11)		
106	Furnish, install and provide all materials for "Aluminum Framed Entrances and Storefronts "as indicated in the contract documents, including but not limited to the following:	Y
a.	Furnish, install and provide all materials for "Storefront Glass and with Hinge Door, Storefront System (Wall Type 11)" as indicated in the contract documents.	Y
b.	Furnish, install and provide all materials for "Metal Door, Steel Painted Metal Doors and Surrounding Steel and Aluminum Framing (Wall Type 12)" as indicated in the contract documents.	Y

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	c.	Provide all exterior aluminum-framed storefronts as indicated in the contract documents.	Y
	d.	Provide all manual-swing aluminum doors as indicated in the contract documents.	Y
	e.	Provide all miscellaneous anchors, fasteners, adhesives, insulation, vapor barrier, sealants, and related accessories as required for completion of installation and indicated in the contract drawings.	Y
	f.	Provide all vestibules including glazed side walls, panel roofs and interior doors as indicated in the contract documents.	Y
	g.	Provide all engineering design of storefront systems as indicated in the contract documents.	Y
	i.	Provide New York State stamped engineered drawings for storefront design. Stamped drawings must comply with requirements of ALT Cladding Ltd (Façade Consultant) and must be accompanied by calculations for each formal submission.	Y
	ii.	Provide installation "Method Statement" and drawings which illustrate the sequence of the Storefront installation from start to finish. Method statement must include the work that is required to be in place prior to the state of this trades work and all space requirements for the purposes of fully understanding the installation logistics.	Y
107		Provide all Storefront coordination required for the implementation of the Storefront and Entrances scope, including but not limited to the following:	Y
	a.	Provide curb drawings as required for the work of other trades (i.e.: concrete trade) indicating all required dimensions for construction. Drawing(s) must reference known and accepted site access lines and/or architectural drawing grid lines.	Y
	b.	Coordinate all support steel and misc. steel provided by this trade with the work of other trades.	Y
	c.	ACKNOWLEDGE: the George Westinghouse HS Vestibule Storefront as noted on Sheet A-390 is excluded from this Bid package. All associated work with this area and in the George Westinghouse High School is by others.	Y
108		Provide all Metal and Glass Systems as per the contract documents, including but not limited to:	Y
	a.	Furnish and install all glass as per the contract documents.	Y
	b.	Furnish and install all wall types as per the contract documents.	Y
	c.	Provide all misc. steel required for the work at the storefront and entrances as indicated in the contract documents.	Y
	d.	Provide all equipment required for staging and setting storefront glass and metal systems.	Y
109		Provide all work at Storefront Aluminum Frames and Doors (Type 11) (and hollow metal, aluminum clad doors) and frames including but not limited to the following:	Y
	a.	Provide all layout for floor pivots and coordination drawings required to locate pivot depressions. This trade to install block in slabs for comeback to adjust door.	Y
	b.	Provide all frame support and frame reinforcing as required to achieve shown door heights and widths. If required, this includes integrated steel frames and aluminum or stainless steel clad steel door assemblies.	Y
	c.	Include four (4) comebacks for adjustments to doors following completion of scope.	Y
	d.	Provide all door thresholds (extruded aluminum threshold) as required per each type of construction and condition.	Y
	e.	Provide laminated and tempered glass at doors as shown and required with coatings to match storefront glass.	Y
	f.	Provide all door hardware, handles, pulls and accessories as indicated in the specifications and as required to assure fully functioning units.	Y
	g.	Provide at exterior doors compression weather stripping at fixed stops as per contracting documents.	Y
	h.	Provide at exterior doors sliding weather stripping retained in adjustable strip mortised into door edge as per contracting documents.	Y
	i.	Provide at exterior doors weather sweeps applied to door bottoms as per contracting documents.	Y
	j.	Provide at Vestibules to be designed for and included provisions for the heaters located in the ceiling including support structure for heater, clearance requirements, and cut out for heater as indicated on the contract documents.	Y
	k.	Provide all Extruded Aluminum Door Frames with Stainless Steel Cladding as indicated on the contract documents.	Y
110		Provide all accessories as required in the contract documents.	Y
PROJECT REQUIREMENTS – STEEL-FRAMED FIRE-RATED WINDOW WALL (TYPE 12) IN TYPE 4A/4B CHANNEL GLASS			
111		Furnish and Install all Steel-Framed Fire-Rated Window Wall as shown on contract documents and per the following specifications, including but not limited to:	Y

F. J. Sciame Construction Co., Inc.

CUNY NYCCT New Academic Building

285 Jay Street

Brooklyn, NY 11201

The City University of New York

Package: Exterior Wall Systems

Addendum 01 - 02.25.13

BID BOOKLET

F.J. SCIAME CONSTRUCTION CO., INC.

TRADE SCOPE CHECKLIST

	a.	Provide interior and exterior steel-framed fire-rated window system as noted in the Construction Documents in type 4A/4B channel glass.	Y
	b.	Provide interior and exterior manual-swing fire-rated doors as noted in the Construction Documents in type 4A/4B channel glass.	Y
	c.	Provide engineering design of window and door systems as required in type 4A/4B channel glass.	Y

Received

OCT 08 2013

By:

Whitestone Construction Corp.

WCC 000875

RIDER B TO AGREEMENT

between

F.J. SCIAME CONSTRUCTION CO., INC. (“Contractor”)

and

WHITESTONE CONSTRUCTION CORP. (“Subcontractor”)

Dated: October 7, 2013

 WCC 000876

RIDER B TO SUBCONTRACT AGREEMENT

ARTICLE 1 - DEFINITIONS

1.1 Defined Terms

1.1.1 As used in this Agreement, any amendment hereto and all Exhibits attached hereto, the following terms shall mean the following:

"Adjoining Premises" shall mean any premises or building adjoining or in close proximity to the Project Site.

"Affiliate" or "Affiliates" shall mean, with respect to any person or entity, any other person, persons, entity or entities which controls, is controlled by or is under common control with such person or entity.

"Applicable Laws" shall mean all laws, codes, treaties, ordinances, rules, regulations, orders, decrees, interpretations, opinions, writs, injunctions and judgments of any national, federal, state, county, municipal, regional or other governmental or quasi-governmental body, instrumentality, agency, authority, court or arbitrator which are applicable to the Construction Manager, the Project, the Project Site, the Services or the Work or the performance thereof, or Hazardous Materials, as the same may be in effect from time to time.

"Application for Payment" shall mean Subcontractor's monthly requisition for compensation which shall be submitted in accordance with this Agreement.

"Architect" shall mean the architect of record for the Project, or a successor designated in writing by Owner.

"As-built Drawings" shall mean a complete set of the plans for the Work marked so as to fully, completely and precisely identify the actual, in-situ and post-construction conditions of the Work.

"Books and Records" shall mean the Subcontractor's accounts, records, books, contracts, purchase orders, receipts, invoices, vouchers, correspondence, memoranda, instructions, drawings, and other data relating to the Work.

"CADD Disks" shall mean disks that conform to the Owner's and the Contractor's standard for files created for the computer-aided design/drafting system employed by the Owner and the Contractor.

"Certificates" shall mean the certificates of use and occupancy and other approvals related to the Project, including for mechanical, electrical, plumbing, fire protection and life safety systems and equipment, which are required for the lawful use and occupancy of the Project, or the agreed, defined portion thereof, by the Owner or its Affiliates or their respective lessees.

"Certificate of Final Completion" shall be the certificate that the Design Professional and/or the Owner's Representative and/or the Contractor shall provide when Subcontractor has met its obligations under Section 10.5.2.

"Certificate of Substantial Completion" shall be the certificate that the Design Professional and/or the Owner's Representative and/or the Contractor shall provide when Subcontractor has met its obligations under Section 10.4 and the Owner and Contractor have so concurred.

"Change" or "Changes" shall refer to the right of Owner and the Contractor to, without nullifying any portion of the Contract Documents, make numerous changes in the Work, including expansion or addition of the scope of the Work, reduction or deletion of the scope of the Work and modification of the scope of the Work.

"Change Order" shall mean a written order, either prepared by the Subcontractor and signed by the Contractor or prepared and signed by the Contractor, authorizing or directing a change in the Work or the method or

manner of performance and/or an adjustment in the Subcontract Sum or Milestone Events.

"Change Order Proposal" shall mean a written proposal setting forth, in such detail as required by the Contractor, any request by the Subcontractor for adjustments to the Subcontract Sum or extension of any Milestone Event that is attributable to the Changes set forth in a Change Order Request, but only if and to the extent such adjustments or extensions are permitted by the terms of this Agreement.

"Change Order Request" shall refer to a written request by the Subcontractor for a Change which sets forth the nature of the Change.

"Claim" shall mean a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of terms, payment of money, extension of time or other relief with respect to the terms of this Agreement and also includes other disputes and matters in question between the Contractor and the Subcontractor arising out of or relating to this Agreement.

"Composite As-built Drawings" shall mean red-lined Construction Documents showing the Work as constructed, and indicating actual locations of utilities and all changes and alterations made to the Work during construction, and incorporating those changes reflected in the As-built Drawings prepared by the Subcontractors, including the Subcontractor and its sub-subcontractors, in a single set of drawings.

"Confidential Information" shall mean any non-public information of any form obtained by the Subcontractor or the Subcontractor's Representatives or the Subcontractor's sub-subcontractors in the performance of the Work, including Proprietary Information.

"Construction Documents" shall mean the Drawings and Specifications.

"Construction Manager" and/or **"Contractor"** shall mean F.J. Sciamè Construction Co., Inc.

"Contract Documents" shall mean the Agreement between the Contractor and the Owner, the Exhibits annexed thereto, this Agreement, the Exhibits and Riders annexed hereto, the Construction Documents, all Directed Change Orders, Change Orders, the Project Site Logistics Plan, and the Safety Plan.

"CUCF" shall mean The City University Construction Fund and its successors.

"Daily Report" shall mean the daily construction report that the Subcontractor's superintendent shall submit to the Contractor as required by Section 5.2.1.

"Design Defects" shall mean all errors, inconsistencies, omissions, conflicts or ambiguities in the Construction Documents.

"Design Professional" shall mean individually and collectively, the Architect, engineers and/or other design professionals identified on Exhibit I annexed hereto and their respective subconsultants, as the same may be updated from time to time by the Owner.

"Direct Work" shall mean all trade work (which term shall be deemed to include, for all purposes under this Agreement, materials and equipment furnished by sub-subcontractors who are just suppliers), whether performed or furnished by the Subcontractor, its sub-subcontractors, the Subcontractors or the Contractor.

"Direct Work Cost" shall have the meaning set forth in Exhibit H.

"Directed Change Order" shall refer to a Change Order that Owner and the Contractor may issue directing the Subcontractor to proceed with a Change in the Work.

"Director" shall mean the Executive Director of the Department of Design, Construction & Management of The City University of New York, or such other person as may be designated pursuant to the Prime Agreement.

"Drawings" shall mean the working drawings now or hereafter prepared by the Design Professional for the Project, including those described on Exhibit J annexed hereto (as the same may be amended, modified, revised or supplemented from time to time).

"Event of Default" shall have the meaning set forth in Section 19.1.1.

"Extra Work" is a Change determined by the Director to be necessary for the completion of the Work, which is not reasonably inferable from or implied by the Drawings or Specifications, and added to this Agreement by written Change Order, whether as a result of negotiation or unilaterally issued by CUCF.

"Field Proceed Orders" shall refer to the orders that the Contractor shall have authority to issue for minor changes in the Work, upon receipt of a corresponding order from the Design Professional or the Owner's Representative.

"Final Completion" shall have the meaning set forth in Section 10.5.2.

"Final Payment" shall mean the last payment constituting the unpaid balance of the Subcontract Sum (including retainage).

"Governmental Authority" shall mean any national, federal, state, county, municipal, regional or other governmental or quasi-governmental body, instrumentality, agency, authority, court or arbitrator.

"Guaranty Period" shall mean the time period of one year commencing on the earlier to occur of (a) the date of Final Completion of the Project, or (b) the date on which the Owner commences full business operations in the Project Site; or such longer period of time as may be prescribed by the terms of any of the Contract Documents.

"Hazardous Materials" shall mean: (1) any "hazardous waste" as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, *et seq.*), as amended, and regulations promulgated thereunder; (2) any "hazardous, toxic or dangerous waste, substance or material" specifically defined as such in (or for the purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, *et seq.*), as amended, and regulations promulgated thereunder; (3) any "hazardous waste" or "hazardous substance" as defined by applicable New York State laws and regulations), as amended, and regulations promulgated thereunder; and (4) any hazardous, toxic, or dangerous waste, substance, or material as defined in any so-called "superfund" or "superlien" law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning such waste, substance or material.

"Indemnitees" shall mean the entities and individuals listed in Exhibit M, and their respective directors, officers, employees, partners, agents, subsidiaries and affiliates.

"Information Only Documents" shall mean all documents that are not Contract Documents and which are provided to the Subcontractor by or on behalf of the Contractor, the Owner, the Owner's Representative or the Design Professional, and which have been made available to the Subcontractor for information purposes only.

"Investigation" shall refer to the right of Owner and/or the Contractor to conduct an investigation of all facts and background of issues relating to the Work that may give rise to a claim or potential claim.

"Key Personnel" shall refer to the Subcontractor's Representatives identified as Key Personnel on Exhibit B, and any replacements thereof approved by Owner and the Contractor in accordance with Section 2.4.2.

"Liquidated Damages" shall mean (i) the Two Thousand sum of Two Thousand Dollars (\$2,000.00) per day for each of the first fifteen (15) days after the Milestone Event – Substantial Completion upon which Substantial Completion shall not have been achieved; (ii) the sum of Two Thousand Dollars (\$2,000.00) per day for each of the sixteenth (16th) through thirtieth (30th) days after the Milestone Event – Substantial Completion upon which Substantial Completion shall not have been achieved; and (iii) the sum of Two Thousand Dollars (\$2,000.00) per

day for each day after the thirty-first (31st) day after the Milestone Event – Substantial Completion upon which Substantial Completion shall not have been achieved.

“Losses” shall mean losses, injuries, liability, damages, judgments, fines, penalties, fees, claims, demands, liens, settlements, costs and expenses, including reasonable attorneys’ fees and disbursements (if necessary or desirable, through any appeals).

“Merchandise” shall mean materials, equipment, goods, merchandise or products purchased by the Subcontractor or its sub-subcontractors.

“Milestone Event” shall mean the critical dates for the completion of certain portions of the Project, and as identified on Exhibit L.

“Notices” shall mean notifications, requests, demands, consents, approvals and other communications to be delivered under this Agreement.

“Notice to Proceed” shall mean a Notice provided to Subcontractor by the Contractor directing the Subcontractor to proceed with the Work.

“Owner” shall mean CUCF, and its successors and assigns.

“Owner’s Representative” shall mean the Director, or such other person as may be designated the “Owner’s Representative” in accordance with the terms of the Prime Agreement.

“Percentage of Completion” shall mean, as to each portion of the Work shown on the Schedule of Values, the lesser of (a) the percentage of that portion of the Work which has actually been constructed, installed or otherwise completed, as applicable, based upon the Schedule of Values, or (b) the percentage obtained by dividing (i) the expense that has actually been incurred by the Subcontractor on account of that portion of the Work for which the Subcontractor has made or intends to make actual payment prior to the next Application for Payment by (ii) the share of the Direct Work Cost allocated to such portion of the Work in the Schedule of Values.

“Permits” shall mean approvals, permits, authorizations, plans, licenses and certifications.

“Prime Agreement” shall mean that certain written agreement between the Construction Manager and The City University Construction Fund, including all exhibits, schedules, addenda, modifications and amendments thereto and thereof, dated the ____ day of _____, 2010, with respect to the Project.

“Product Data” shall mean all illustrations, schedules, performance charts, diagrams, brochures, instructions, installation and maintenance recommendations, parts lists, and other information furnished by the Contractor, the Subcontractor and its sub-subcontractors, as the case may be, to illustrate or describe materials, equipment or systems for some portion of the Work. Product Data shall include technical information published or prepared by the applicable equipment or materials manufacturer and shall include complete engineering and dimensional data.

“Project” shall mean the project described in Exhibit A, and includes all construction on and in the Project Site required under the Construction Documents.

“Project Communications Program” shall mean the program to be employed by the Construction Manager in order to facilitate communication among all parties working on the Project, including, without limitation, the Construction Manager, the Subcontractor, the Owner and Subcontractors and Design Professional, which program shall be prepared by the Construction Manager and approved by Owner and annexed hereto as Exhibit P.

“Project Documents” shall mean Drawings, Specifications, Subcontracts, Shop Drawings, Samples, Product Data, Change Orders, Directed Change Orders, Field Proceed Orders, purchase orders, Subcontractors’ As-

built Drawings, Composite As-built Drawings, guarantees, warranties, documents, analyses, Books and Records and other financial documentation, operating manuals, maintenance instructions, test results, logs, write-ups, requests for proposals, proposals, information and other documents and materials created or generated in connection with the Project.

"Project Schedule" shall mean the time schedule in CPM format, prepared by the Construction Manager and approved by the Owner, detailing the sequence and time durations for the Work and the Milestone Events, including any approved revisions or updates thereto.

"Project Site Logistics Plan" shall mean the mobilization and logistics plan prepared by the Construction Manager and approved by Owner, annexed hereto as Exhibit D.

"Prompt Payment Act" has the meaning given in Section 15.28.1.

"Proprietary Information" shall mean all patent, copyright and trade secret rights, with respect to any work product of the Subcontractor and its sub-subcontractors developed or conceived by the Subcontractor and its sub-subcontractors in the course of performing the Work.

"Punch List" shall mean the list of the Work or corrective work remaining to be done and the time schedule for completing such work after a Certificate of Substantial Completion is issued.

"Recovery Action" shall mean an action in which Subcontractor is obligated to defend each of the Indemnitees against any claim, demand, suit, action, proceeding, arbitration or other means or methods pursuant to which the recovery of Losses is sought against such Indemnitee.

"Required Subcontractor Retainage" shall mean ten percent (10%) of the amount of each progress payment under a Subcontract (calculated without reduction for retainage).

"Safety Plan" shall mean the site-specific safety plan, annexed hereto as Exhibit F, created by the Construction Manager and approved by the Owner, setting forth the procedures and policies to be employed by the Construction Manager and the Subcontractors for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, including safety of all persons and property during performance of the Work, to ensure that the Work is performed in the safest possible manner and in compliance with all Applicable Laws.

"Samples" shall mean the physical samples which exemplify materials, finishes and workmanship and establish standards by which the Work will be judged.

"Schedule of Values" shall mean an itemized breakdown of each component of the applicable Direct Work Cost, all of which shall be approved by Owner's Representative.

"Separate Contractors" shall mean all persons (other than Owner, or departments or user groups within Owner) who are engaged by Owner or any of Owner's tenants or prospective tenants with respect to the Project (including without limitation the tenant installations) or work related to the Project (such as the Design Professional and the Owner's other contractors and consultants), excluding Construction Manager and its Subcontractors.

"Services" shall mean all services required to be provided by the Subcontractor under this Agreement.

"Shop Drawings" shall mean the drawings, diagrams, schedules and other data specifically prepared by the Subcontractor or its sub-subcontractors, as the case may be, to illustrate or define portions of the Work, which, as appropriate, shall reflect and incorporate the information in the Construction Documents depicting or otherwise pertaining to such portions of the Work.

"Specifications" shall mean the specifications now or hereafter prepared by the Design Professional for the Project, including those described on Exhibit K annexed hereto, as the same may be amended, modified, revised or

supplemented from time to time.

"Staffing Plan" shall mean the staffing plan attached as Exhibit B, prepared by Subcontractor and approved by Construction Manager, which lists the type and number of personnel required to be included as the Subcontractor's Representatives, including the respective portion of their working hours that will be dedicated to the Project.

"State" shall mean the State in which the Project is located.

"Subcontract Assignee" shall be further described in Section 8.2.7.

"Subcontractor" shall mean Whitestone Construction Corp.

"Subcontractors" shall mean the parties engaged by the Construction Manager to perform a portion of the Work or to supply materials and equipment and shall include the Subcontractor hereunder and its sub-subcontractors.

"Subcontractor's Final Affidavit and Release of Claims" shall mean the affidavit submitted by the Subcontractor and its sub-subcontractors in the form of Exhibit O.

"Subcontractor's Representatives" shall mean any and all of the employees and personnel (and any replacements and proposed replacements thereof) generally described in Section 2.4.1 and as listed on Exhibit B.

"Subcontractor's Waiver of Release of Lien" shall mean the waiver and release submitted by the Subcontractor and its sub-subcontractors in the form of Exhibit N.

"Subcontracts" shall mean any subcontract between the Construction Manager and a Subcontractor and any sub-subcontract between a Subcontractor or sub-subcontractor and a sub-subcontractor at any tier.

"Submittals" shall mean Shop Drawings, Product Data, Samples and similar submittals required by all Contract Documents, including the Prime Agreement. Submittals shall, if requested, furnish Submittals in electronic form.

"Substantial Completion" shall mean that stage in the progress of the Work when all of the requirements of Section 10.4.1 hereof have been satisfied by Subcontractor.

"Substantial Completion Date" shall mean the date that is set forth for Substantial Completion as stated in the Project Schedule.

"Unavoidable Delay Events" shall mean any one of the events listed in Section 1.35 of the Prime Agreement which causes an Unavoidable Delay.

"Unavoidable Delays" shall mean material delay in the performance of any portion of the Work resulting in the Subcontractor not being able to achieve any Milestone Event which is caused by an Unavoidable Delay Event.

"Weekly Report" shall mean the weekly construction report that the Subcontractor shall submit to the Contractor as required by Section 5.3.1.

"Work" shall mean all work and other Services required to be performed by the Subcontractor and its sub-subcontractors under the Contract Documents, and includes all labor, materials, equipment and services to be provided by under the terms of this Agreement to complete the Project.

"Work Commencement Date" shall mean the date the Construction Manager is required to commence the Work, as directed solely by the Owner pursuant to a Notice to Proceed.

1.2 Defined Terms.

Terms used in this Agreement that are defined in the Prime Agreement shall have the same meanings designated to them in the Prime Agreement herein, unless specifically provided herein otherwise.

ARTICLE 2 - GENERAL PROVISIONS

2.1 It is the express intentions of the Contractor and Subcontractor that, to the greatest extent possible, this Rider shall be interpreted and given effect so as to cause no conflict with the terms and conditions of the body of the Agreement and any preceding Riders to the Agreement. Nevertheless, in the event of any irreconcilable conflict between the terms of this Rider B, on the one hand, and the body of the Agreement or any preceding Rider, on the other, it is the specific intention of the Contractor and Subcontractor that the terms of this Rider B shall control

2.2 Incorporation by Reference of Prime Agreement: Subcontractor shall furnish and perform its obligations hereunder and the Work of the Project in strict conformance with the Prime Agreement, except as and only to the extent that the obligations of the Subcontractor are specifically modified herein. Subcontractor shall perform the Work and all its obligations undertaken pursuant to this Agreement in the same manner, subject to the same conditions and provisions, with the same quality and to the same extent that the Construction Manager is bound by the Prime Agreement to perform the Work for CUCF. Notwithstanding anything to the contrary in this Agreement: (a) each and every duty and obligation of the Construction Manager with respect to all the services which the Construction Manager and its Subcontractors are obligated to perform shall be performed by the Subcontractor pursuant to the provisions of the Prime Agreement for the Work, and such duties and obligations of the Construction Manager to CUCF under the Prime Agreement shall likewise be duties and obligations of Subcontractor to the Construction Manager with respect to the Construction Manager under this Agreement, and (b) each and every right, action or remedy of CUCF with respect to the Construction Manager relating to the performance of the Work shall be a right, action or remedy of the Construction Manager with respect to Subcontractor under this Agreement. The Subcontractor has read the entire Prime Agreement, including all Exhibits thereto, and is fully familiar with the terms thereof, or, having been given a reasonable opportunity to read the foregoing, has knowingly waived its right to do so, and expressly agrees to be fully bound thereby and subject to all the provisions thereof with respect to the Construction Manager as and to the same extent the Construction Manager is subject to all the same provisions with CUCF and, with respect to the Work, to assume towards the Construction Manager all responsibilities assumed by the Construction Manager toward CUCF in the Prime Agreement. Further, it is the express intention of the Construction Manager and Subcontractor that all provisions of the Prime Agreement that, pursuant to the terms thereof, are required to be contained in this Agreement or to which the Prime Agreement requires the Subcontractor to be bound or which impose obligations on Subcontractors, are hereby expressly incorporated herein by this reference. In the event of an inconsistency or conflict between or among this Agreement, the Prime Agreement and any exhibit, attachment or document incorporated by reference into this Agreement, the documents shall govern in the following order of precedence: (a) the drawings (large scale governing over small scale), specifications and addenda issued prior to the execution of this Agreement; (b) the Bid Checklist; (c) this Rider to Agreement; (d) Rider A to the Agreement; (e) the Agreement; and (f) the Prime Agreement, unless expressly stated otherwise herein. It is understood and agreed that CUCF is a third-party beneficiary with respect to all rights, actions, or remedies of the Construction Manager with respect to the Subcontractor under this Agreement.

2.3 Subcontractor

2.3.1 The Subcontractor hereby represents that (a) it has all the necessary power and authority to enter into this Agreement and that it is under no obligation or restriction that would in any way interfere or be inconsistent with, or create a conflict of interest concerning, its performance of the Work and that it shall not acquire any interest, directly or indirectly, which would or may create a conflict of interest, nor shall it employ or retain any person having such interest during the term of this Agreement; (b) it is financially solvent and sufficiently experienced and competent to perform the Work required by this Agreement, or to

cause the same to be performed; (c) it is licensed and authorized as may be required by the appropriate agency in the State of New York or the City of New York, as the case may be, to conduct business in the City and State of New York, and to perform its obligations hereunder, and that every professional and sub-subcontractor whom it retains to perform any of the Work shall be authorized to transact business in the State of New York and licensed by the appropriate agency, as required by such representation; (d) it will take all steps necessary and advisable to maintain its and its retained professionals' and sub-subcontractors' authorizations and licenses related to the Work, giving the Construction Manager prompt written notice of any lapse of any such license; and (e) that (1) it is not in arrears to CUCF, to CUNY, the State or City of New York, or the United States of America, upon debt, contract, or taxes; (2) it is not a defaulter, as surety or otherwise, upon any obligation to CUCF, the State or City of New York; (3) it has not been declared not responsible or disqualified by CUCF, by CUNY, by the State or City of New York, or by any public benefit corporation or agency of the State or New York, or by the United States of America and (4) there is not any proceeding pending relating to the responsibility or qualification of the Construction Manager to receive public contracts. The Subcontractor accepts the relationship of trust and confidence established between it and the Contractor by this Agreement. The Subcontractor shall employ (x) its best efforts, skill and judgment in the performance of the Services, and (y) efficient business administration, coordination and management, and its best efforts, skill and judgment, to ensure that it will perform the Work and cause its sub-subcontractors, if any, to perform the Work in the most expeditious and economical manner, consistent in each case with (i) the intent of the Contract Documents, (ii) Applicable Laws, (iii) the highest construction industry standards and practices and (iv) the best interests of the Owner and the Contractor relating to cost, quality and schedule. Due to the fiduciary relationship which the Subcontractor is assuming toward the Contractor and the Owner with respect to the Work, it is the intention of this Agreement to impose, and the Subcontractor accepts, the special and additional duties of trust and confidence created hereby.

2.3.2 Except as authorized by the Specifications or authorized in writing by the Contractor, the Subcontractor shall not perform or subcontract for any act which would constitute the rendering of professional services in the practice of architecture, engineering or laboratory testing.

2.3.3 The Subcontractor shall cooperate and coordinate with, and perform the Services in conjunction and harmony with, the Contractor, the Owner or Separate Contractors and any of their agents, invitees, and tenants at the Project and any employees, agents or invitees of any such tenants at the Project, in such a manner as may be necessary or, in the judgment of the Owner and/or Contractor, desirable to facilitate the prosecution of the Work and completion of the Project (including the work of any Separate Contractors) expeditiously and economically, consistent with similar buildings in the Borough of Manhattan and the best interests of the Owner and the Contractor. The Subcontractor acknowledges that the Owner, directly and through the Design Professional, the Contractor and the Separate Contractors, is and shall be actively involved in the development of the Project (specifically including without limitation the completion of tenant installation work), and in interaction with the Contractor and the Subcontractors, and that the Owner and the Contractor will be relying upon the Subcontractor to coordinate the entirety of the work being performed on the Project Site and to contemplate and incorporate the logistical requirements of Separate Contractors. The Subcontractor understands and agrees that no such involvement or interaction shall be construed to relieve the Subcontractor from the performance of, or to waive or modify in any respect, any of the Services. For the avoidance of doubt, the Subcontractor shall cooperate, coordinate, facilitate and work in conjunction with any work being performed by or for the benefit of the Contractor, any of Owner's tenants and/or invitees at the Project.

2.4 Personnel

2.4.1 The Subcontractor shall hire and retain as Subcontractor's Representatives a sufficient number of employees and other personnel with the requisite skill, professional training and experience to enable the Subcontractor to perform the Services in the most expeditious, economical and entirely lien-free manner in accordance with Applicable Laws, in conformity with the Contract Documents and consistent with the quality and nature of the Project and the best interests of the Contractor and the Owner, including but not limited to a competent superintendent or foreman, fluent in English, to whom Contractor may issue instructions and who shall have full authority to carry out all instructions issued by Contractor. At a

minimum, the Subcontractor's Representatives shall include the type and number of personnel identified on the Staffing Plan. None of the Subcontractor's Representatives shall be considered to be an employee of Owner and/or Contractor for any purpose or entitled to exercise any rights, or seek any benefit, accruing to the employees of Owner and/or Contractor by virtue of the work or services rendered by the Subcontractor's Representatives in connection with the Project. If obligations are imposed upon Contractor in the Prime Agreement regarding superintendence or project management, these obligations are specifically incorporated herein by reference and are imposed upon Subcontractor to the extent necessary to assure Contractor's compliance with its contractual obligations to the Owner.

2.4.2 Certain of the Subcontractor's Representatives who will be performing the Services are identified as Key Personnel. Key Personnel shall devote the respective portion of their normal working hours set forth in Exhibit B to the performance of the Services. Key Personnel shall be subject to the Contractor's and the Owner's prior written approval and shall not be replaced without the prior written consent of the Contractor and the Owner, provided, however, that if any Key Personnel shall leave the Subcontractor's employ, or otherwise become incapacitated, the Subcontractor shall designate a replacement Key Personnel having at least the same qualifications, skill and level of experience as the former or incapacitated Key Personnel, and who shall otherwise be satisfactory to the Owner and the Contractor. At the direction of the Owner and/or the Contractor, any Key Personnel to whom the Owner and/or Contractor has a reasonable objection shall be replaced by the Subcontractor within three (3) days after such direction is issued. The Owner and the Contractor shall have the sole and absolute right to interview and approve in advance any proposed replacement Key Personnel. The hourly rate charged by the Subcontractor with respect to any replacement Key Personnel shall be at a level commensurate with the qualifications, skill and level of experience of such Key Personnel, but in no event shall such rate exceed the rate charged by the Subcontractor with respect to the replaced Key Personnel without the prior written consent of Owner and Contractor.

2.4.3 The Subcontractor shall provide security for the Project Site in accordance with a security plan prepared by the Subcontractor and approved by Owner and the Contractor and described on Exhibit C.

2.5 Design Professional

2.5.1 The Design Professional (and in some instances as set forth in this Agreement, only the Architect) may, among other things, inspect, observe and monitor, on behalf of the Owner, the Work and certain other elements of the Project, provide to the Contractor and the Subcontractors interpretations or clarifications of the Drawings or Specifications, certify Applications for Payments and certify Substantial Completion and Final Completion. It is understood, however, that no such inspection, observation, monitoring, interpretation, clarification or certification, nor the provision of any other services by the Design Professional for the Project, shall be construed to waive, modify or otherwise affect any of the Subcontractor's obligations under this Agreement.

2.5.2 The Subcontractor's communications by and with the Design Professional shall be conducted through the Contractor by such means as Contractor shall prescribe, and shall be recorded utilizing internet/web-based construction management software to be provided and maintained by the Contractor and approved by the Owner, with copies of written communications to be delivered by the Subcontractor, at the Subcontractor's sole cost and expense, to the Owner and the Contractor.

ARTICLE 3 - CONTRACT DOCUMENTS

3.1 Contract Documents

3.1.1 The intent of the Contract Documents is to include all items necessary for the proper execution of the Work and completion of the Milestone Events. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Subcontractor and its sub-subcontractors, if any, shall be required if and to the extent consistent with the Contract Documents and inferable from them as being necessary to produce the intended results.

3.1.2 In the event of any conflict or discrepancy between or among different versions of the same Contract Document, the most recently issued version takes precedence over previous versions. In the event of any conflict or discrepancy between provisions in separate Contract Documents, the more stringent provision shall govern; provided, however, figured dimensions shall prevail over scale dimensions and large scale Drawings shall prevail over small scale Drawings. If the conflict or discrepancy between or among separate Contract Documents pertains to (i) quantity, then the Contract Document requiring the greater quantity shall be deemed to be more stringent, (ii) quality, then the Contract Document requiring the better quality shall be deemed to be more stringent, or (iii) cost, then the Contract Document requiring the greater cost shall be deemed to be more stringent. Notwithstanding any other provision, term, condition or Exhibit to the contrary, in this Agreement and/or the Contract Documents, in the event of any conflict or discrepancy between the terms and conditions of the Agreement and the exhibits, the terms and conditions of Rider B of this Agreement shall take precedence, unless a more stringent standard is set forth elsewhere in this Agreement and/or the Contract Documents.

3.2 Information Only Documents

3.2.1 The Information Only Documents are not part of the Contract Documents, shall be used by the Subcontractor at its own risk, and are provided to the Subcontractor without any representation or warranty by the Contractor, Owner, the Owner's Representative, any Separate Contractor or the Design Professional as to the accuracy or completeness of the Information Only Documents or any other matter.

ARTICLE 4 - SUBCONTRACTOR SERVICES

4.1 Scope of Services

4.1.1 The Subcontractor shall administer, manage, supervise, direct, coordinate and cause the proper, lawful, lien-free and efficient performance and furnishing, through its subcontract with the Contractor, its sub-subcontracts or its own forces, of all work, labor, supervision, materials, equipment, tools and services required for the complete construction and/or installation of the Project.

4.1.2 Without limiting any other provision of this Agreement, the Subcontractor shall perform any and all other services that are customarily performed by Subcontractors for projects similar in scope and nature to the Project.

4.1.3 The Subcontractor shall, in a lawful, lien-free manner perform all of the Services in accordance with the terms and conditions of this Agreement.

4.1.4 The Owner and the Contractor retain the right, in their sole and absolute discretion, to delete any portion of the Work from the scope of this Agreement, and a deductive Change Order shall be issued to reflect such deletion. The Owner and/or the Contractor may thereafter separately contract for such portion of the Work outside the scope of this Agreement.

4.2 Procurement Analysis, Pre-Purchasing

4.2.1 The Subcontractor shall provide a procurement plan, including a purchasing schedule, as set forth in Exhibit E, as well as make recommendations to the Contractor for alternative or substitute materials and equipment and their respective costs and scheduling impact.

4.2.2 Consistent with the Owner's and the Contractor's goal of maintaining the Project Schedule, the Subcontractor shall identify, and make recommendations to the Contractor regarding, the advisability of pre-purchasing long-lead time materials, equipment and supplies required in connection with the Work, and advise the Contractor with respect to potential delays in their purchase, fabrication or delivery.

4.2.3 The Subcontractor shall arrange for expediting on and off-site storage of pre-purchased long-lead items, if approved in advance in writing by the Owner and the Contractor (including, without

limitation, such arrangements as the Owner and/or Contractor shall deem necessary or desirable for (i) access to such materials, equipment or supplies for the purpose of inspection and removal of the same, (ii) protecting the Owner's and/or Contractor's title to such materials, equipment or supplies, free and clear of all liens, encumbrances and rights of others, and (iii) insuring and protecting the same), and shall not permit any payment for materials, equipment or supplies stored off-site, unless such payment has been approved in advance in writing by the Owner and the Contractor and otherwise is authorized under the provisions of this Agreement.

4.3 Value Engineering, Cost Control and Life Cycle Analyses

4.3.1 If and when so requested, the Subcontractor shall initiate, manage and perform value engineering services so that the Owner's and Contractor's objectives are met at the lowest cost, consistent with the standards established by the Owner and the Contractor for the Project.

4.3.2 If and when so requested, the Subcontractor shall assist the Contractor, the Owner, the Owner's Representative and the Design Professional in the performance of an evaluation of proposed building components and systems relating to initial capital costs, life cycle costs, operating and maintenance costs, energy conservation factors and systems maintenance and longevity, as applicable. The Subcontractor shall assist the Owner and/or the Contractor in applying for and obtaining rebates from energy providers.

4.4 Existing Conditions and Adjoining Premises

4.4.1 Prior to commencing the Work, the Subcontractor, from time to time, at appropriate intervals, (a) carefully investigate, study and compare all then existing conditions at the Project Site with the design development documents and, subsequently, with the Drawings, Specifications and other Contract Documents; (b) verify all figures on the Drawings before laying out the Work; (c) take field measurements and verify field conditions and carefully compare such field measurements and field conditions and other information known to the Subcontractor with the Contract Documents before commencing activities; (d) review the Contract Documents and, if applicable, give prompt notice to the Design Professional and the Owner Contractor of all Design Defects and obtain from the Contractor specific instructions in writing with respect thereto before proceeding with the Work, and (e) if applicable, cause to have prepared a pre-construction survey, including photographs and documentation, of any pertinent portion(s) of the Project Site and all Adjoining Premises for review and approval of the Contractor.

4.4.2 The Subcontractor and its sub-subcontractors, if any, shall take field measurements and verify field conditions and carefully compare such field measurements and conditions and other information with the Contract Documents before commencing any Work.

4.4.3 The Subcontractor and its sub-subcontractors, shall examine all Adjoining Premises and ascertain, before beginning the Work, the existing condition of the Adjoining Premises, and shall be governed thereby for the necessary, thorough, safe and satisfactory performance of the Work as necessary or required by Applicable Laws, whether or not such matters were indicated or specified on the Contract Documents. The Subcontractor shall perform all work in such a manner and take such protective measures as are necessary to keep and leave the Adjoining Premises in the same condition as they were before the commencement of the Work. Without limiting the generality of the foregoing or any other provision in this Agreement, the Subcontractor shall monitor any and all vibrations caused by the Work (specifically without limitation, the excavation and foundation work) which could affect any Adjoining Premises, and shall be responsible for any and all damage caused to the Adjoining Premises or claimed by an owner, tenant or occupant of such Adjoining Premises.

4.4.4 Whenever any parts of the Adjoining Premises interfere with or are interfered with by the Work, the Subcontractor shall make whatever changes to the Work are made necessary by such interference, whether or not such interference is shown on the Contract Documents. If such interference was not discovered and was not capable of being discovered by the Subcontractor upon the examination described in this section, then the additional cost, if any, incurred by the Subcontractor by reason of such changes to the Work shall constitute a Scope Change. If such interference was reasonably capable of being discovered by

the Subcontractor before such examination, then such additional cost, if any, shall not constitute a Scope Change.

4.5 Project Site Logistics Plan

4.5.1 The Subcontractor shall prepare and submit for the Owner's and Contractor's approval a Project Site Logistics Plan that designates the field office for the Subcontractor's field representatives, storage and staging areas, shanties, protection (netting, cables, etc.), hoists, cranes, fences and sidewalk bridges, temporary loading docks, if any; temporary protection, temporary circulation and routes, and procedures for material delivery, location of equipment and certain other information, as annexed hereto as Exhibit D. The Subcontractor shall identify and advise the Contractor with respect to all required permits and special consultants that may be needed for implementing the Project Site Logistics Plan. The Construction Manager shall also assist the Owner and the Contractor in obtaining permission or any necessary rights or easements for gaining access to adjacent properties for implementing the Project Site Logistics Plan, if necessary.

4.5.2 The Subcontractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the Contractor, the Owner, and owners and users of Adjoining Premises. The Subcontractor shall at all times conduct the Work to ensure the protection of persons and property, to minimize interference with the daily operation of adjacent buildings and businesses, and to minimize inconvenience to the general public and the Owner and its Affiliates and their respective guests, visitors and invitees.

4.5.3 The Subcontractor shall provide proper and safe access to and egress from any tenant-occupied areas of the Project Site at all times. The decision to permit any tenant or other third parties to occupy any portion of the Project Site shall be made by the Owner in its sole and absolute discretion. In addition, the delivery, unloading, staging and storage of material and equipment shall be only in areas approved by the Owner and the Contractor. Such areas will accommodate only limited amounts of material and equipment. The Subcontractor shall be responsible for coordinating the arrival of material and equipment in order to prevent any accumulation outside designated areas. The Subcontractor shall coordinate and cooperate with the appropriate Separate Contractors in connection with such delivery, unloading, staging and storage of material and equipment. The movement of material, equipment and personnel shall be restricted to those areas and routes within the Project Site as may be designated or approved by the Owner and the Contractor. Any damage caused by such movement shall be repaired by the Subcontractor to the satisfaction of, and at no cost to the Contractor and the Owner.

4.5.4 Once the Owner takes over responsibility for the security of the Project Site, the Subcontractor shall require its employees to comply with the Owner's security rules and regulations. Insofar as practicable, the Subcontractor shall require all such employees to use access points designated by the Owner to enter and exit the Project Site. The Subcontractor shall require all guests, visitors and invitees to the Project Site to wear any safety equipment that may be necessary to ensure the safety of such guests, visitors and invitees. The Owner, the Contractor and their respective agents, invitees and guests, including without limitation its tenants, prospective tenants, their designers and potential contractors and any Separate Contractors shall be afforded access to the Project Site at all times.

4.5.5 If required by the jurisdiction in which the Project Site is located, the Subcontractor shall hire off-duty, uniformed police officers to control public vehicular traffic, other than the construction traffic, during periods of deliveries, construction vehicles entering and leaving the Project Site, and during periods of material off-loading.

4.5.6 The Subcontractor acknowledges that the Owner's tenants and Separate Contractors will have business and/or construction operations at the Project Site during some or all of the Work. The Subcontractor agrees to permit the quiet enjoyment and unimpeded prosecution of such business and/or construction activities.

4.6 Safety Precautions and Programs

4.6.1 In performing the Work and all other Services under this Agreement, the Subcontractor shall provide for the Owner's and the Contractor's approval, and shall observe and comply with all of the terms and conditions of, a site-specific safety plan for the Project, annexed hereto as Exhibit F. The Subcontractor shall require its employees to comply with the provisions of the site-specific safety plan.

4.6.2 The Owner places, and requires the Contractor and its subcontractors to place, the highest importance on health and safety during performance of the Work by the Contractor and its subcontractors. Accordingly, the Subcontractor is required to place and shall place, the highest importance on health and safety during performance of the Work by the Subcontractor and its sub-subcontractors. The Subcontractor shall, at all locations where Work is to be performed, comply with all Applicable Laws regarding health and safety matters. The Subcontractor shall also ensure that all of its employees are made aware of all safety, fire and health requirements and regulations applicable to the Work to be performed pursuant to the Contract Documents.

4.6.3 The Subcontractor shall designate a responsible member of the Subcontractor's organization at the Project Site whose duty shall be the prevention of accidents and the enforcement of safety codes and regulations. This person shall not be the Subcontractor's superintendent unless otherwise approved in writing by the Owner and the Contractor.

4.6.4 Without the prior written consent of the Owner and the Contractor, the Subcontractor shall not bring onto the Project Site or use in the Work any Hazardous Materials. If the Subcontractor encounters at the Project Site materials reasonably believed to be Hazardous Materials, which have not been rendered harmless and for which no express provision has previously been made in the Contract Documents, the Subcontractor shall immediately stop Work in the area affected and notify the Contractor of the condition. The Work in the affected area shall be resumed when the Hazardous Materials have been removed or rendered harmless.

4.6.5 The Subcontractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, including safety of all persons and property during performance of the Work. This requirement shall apply continuously throughout the course of the Work and shall not be limited by normal working hours. The Subcontractor shall take all reasonable precautions and safety measures, including those listed in the Contract Documents, for the safety of, and shall, without limitation, provide protection to prevent damage, injury or loss to:

- i. all employees of the Subcontractor and its sub-subcontractors and all other persons who may be affected by the Work;
- ii. the Owner's and the Contractor's property and all the Work to be incorporated therein, whether in storage on or off the Project Site, under care, custody or control of the Subcontractors or sub-subcontractors;
- iii. other property at the Project Site or adjacent thereto, including trees, shrubs, lawns, stairways, passageways, halls, walks, pavements, roadways, structures, systems, equipment and utilities; and
- iv. the Contractor, the Owner, and its Affiliates, tenants, and their respective employees and property, guests, visitors and invitees to the Project Site.

4.6.6 The Subcontractor shall promptly report to the Owner and the Contractor, and promptly, in accordance with the Project Communications Program, remedy, any damage or loss to property caused in whole or in part by the Subcontractor, a sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

4.6.7 The Subcontractor shall promptly report in writing to the Owner and the Contractor, and in accordance with the Project Communications Program, all accidents whatsoever and any significant or unusual events arising out of, or in connection with the performance of the Work, whether on or adjacent to the Project Site.

4.6.8 The Subcontractor shall not permit to exist a hazardous, unsafe, unhealthy or environmentally unsound condition or activity over which the Subcontractor has control at any location where the Work is to be performed. In the event that the Subcontractor becomes aware of such condition or activity, the Subcontractor shall promptly notify the Contractor and immediately take whatever steps which are necessary to eliminate, terminate, abate and rectify such condition or activity.

4.6.9 If the Owner and/or the Contractor requests that the Subcontractor provide safeguards not currently in use at the Project Site but reasonably considered by the Owner to be necessary, whether or not required by Applicable Laws, and if the Subcontractor fails to provide the requested safeguards within three (3) days after notice thereof, the Contractor may provide the safeguards and backcharge the Subcontractor for the cost thereof. Notwithstanding the foregoing, in the event of an emergency, the Contractor may provide such safeguards without providing the Subcontractor notice thereof, and may backcharge the Subcontractor for the cost thereof. Neither such a request for safeguards nor the provision of such safeguards by the Contractor shall relieve the Subcontractor of its sole responsibility to maintain safe and efficient working conditions at all locations where the Work is to be performed.

4.6.10 In an emergency affecting the safety of persons or property, the Subcontractor shall immediately attempt to contact the Contractor. In the event of such emergency affecting the safety of persons or property, the Subcontractor shall act, at the Subcontractor's reasonable and prudent discretion and in accordance with Applicable Laws and the site-specific safety plan, to prevent threatened damage, injury or loss, and shall immediately notify the Contractor of the emergency.

4.6.11 Subcontractor's duty to comply with Applicable Laws in the performance of the Work and otherwise pursuant to this Agreement shall include, without limitation, strict compliance with the Noise Control Code provisions and obligations set forth in Article 41 of the Prime Agreement.

4.7 Permits and Approvals

4.7.1 The Subcontractor shall (a) identify in a written report, in cooperation with the Contractor, the Owner's Representative and the Design Professional where required, all Permits required for commencement, continuation and completion of construction and occupancy of the Project, and the costs associated with obtaining each of the same, (b) assist in completing the documents and schedules required in connection with any such Permits, and (c) attend and participate in, through its project manager or such other Key Personnel reasonably acceptable to the Owner and the Contractor, all hearings and meetings with Governmental Authorities pertaining to such Permits.

4.7.2 The Subcontractor shall provide a log to the Contractor of, and collect from all sub-subcontractors, all Permits that are required pursuant to the applicable Subcontracts. The Subcontractor shall cause such permits that are required for completion of the Work to be opened and continuously maintained without interruption during the performance of the Work.

4.7.3 The Subcontractor shall perform the Work and all other Services in compliance with all necessary Permits.

4.8 Construction Means and Methods

4.8.1 The Subcontractor shall be primarily responsible for and have control over construction means, methods, techniques, sequences and procedures for the Work, and for coordinating all portions of the Work under the Contract Documents or otherwise required by good construction industry practice or Applicable Laws. Notwithstanding the generality of the foregoing, the Construction Manager and the

Director shall each have the right to reject means and methods proposed by Subcontractor which, in their determination (1) will constitute or create a hazard to the Work, or to persons or property; or (2) will not produce finished Work in accordance with the terms of the Prime Agreement and this Agreement. The Subcontractor understands and acknowledges that although certain construction means, methods, techniques, sequences or procedures necessary to the completion of the Work may be referenced in the Contract Documents, it shall remain primarily responsible for and have control over the construction means, methods, and techniques necessary to comply with such sequences and procedures. The Construction Manager's and/or CUCF's review, analysis and/or changes to the means and methods of construction proposed by Subcontractor shall not relieve the Subcontractor of its obligation, liability and responsibility for the means and methods of construction with respect to the Work. The Subcontractor shall review the construction means, methods and techniques specified in the Contract Documents and in this Agreement, and notify the Contractor, the Owner and the Design Professional if Subcontractor objects to any of the means, methods or techniques, or determines that any of the specified means, methods or techniques would deviate from customary and accepted construction practices or violate any warranty.

4.9 General Conditions Work

4.9.1 The Subcontractor shall perform the General Conditions Work in a manner that facilitates the expeditious, safe and economic prosecution of the Work.

4.10 Performance of Work: Correcting Defective Work

4.10.1 The Subcontractor shall observe, monitor, oversee and supervise the Work so that it is performed in accordance with the requirements of the Contract Documents, Applicable Laws and the highest construction industry standards and practices and generally to guard the Owner and the Contractor against defects and deficiencies in the Work, and advise the Contractor Owner and the Design Professional of any such defects or deficiencies.

4.10.2 The Subcontractor shall cause the full, complete and timely performance of all Work in strict accordance with the terms and provisions of this Agreement, the Agreement between the Owner and the Contractor, and all Subcontracts. The Subcontractor shall review the Work done by its sub-subcontractors to determine whether the Work is being performed in accordance with the requirements of the Contract Documents and to guard the Owner and the Contractor against defects and deficiencies in the Work. If, during the progress of the Work, the Subcontractor's personnel discover work being performed contrary to the Contract Documents or sound construction practices and procedures, the Subcontractor shall reject such Work and promptly notify the Contractor of such, and make recommendations to the Contractor regarding possible methods of correcting such defective or deficient Work. The Subcontractor shall require its sub-subcontractors, in accordance with the requirements of the respective Subcontract, to promptly correct any such defective or non-conforming Work. If the Subcontractor and/or its sub-subcontractors fail to correct such defective or non-conforming Work promptly, then the Subcontractor, at its sole cost and expense, shall correct such Work in an expeditious and economic manner, with its own forces or through other sub-subcontractors.

4.10.3 If and when directed by the Owner and/or the Contractor, the Subcontractor shall and shall require its sub- subcontractor to stop Work or any portion thereof and require special inspection or testing of any Work suspected by the Owner or the Architect or the Contractor not to be in accordance with the Contract Documents, whether or not such Work has been fabricated, installed or completed. If, at any time before the completion of all inspections, approvals and the Owner's and the Contractor's acceptance of the Work, the Subcontractor (or the Owner or the Contractor) has reasonable cause to believe that any Work is not in accordance with the Contract Documents, the Contractor shall be so advised and the Contractor may direct the Subcontractor to remove or uncover, or cause to be removed or uncovered, any portion of the completed Work. If the uncovered Work is determined not to have been in accordance with the Contract Documents, the removal or uncovering shall be at the Subcontractor's own cost and expense (subject to use of available contingency monies, if any), otherwise the cost of such removal or uncovering shall be deemed a Cost of the Work and, if applicable, an appropriate Change Order will be issued to account for the cost of such removal or uncovering. After examination, the Subcontractor shall restore (or cause to be restored) the

Work to the standard required by the Contract Documents, as directed by the Contractor, which restoration shall be at the Subcontractor's own cost and expense if the uncovered Work is determined not to have been in accordance with the Contract Documents, otherwise the cost thereof shall be deemed a Cost of the Work and, if applicable, an appropriate Change Order will be issued to account for the cost of such restoration.

4.10.4 The Subcontractor shall monitor the performance by its sub-subcontractors of correction of defective or non-conforming Work, including performance of all guarantees and warranties given by sub-subcontractors or delivered pursuant to the Contract Documents.

4.10.5 If the Subcontractor performs Work, or activities related thereto, knowing or having reason to know of a Design Defect, and fails to so notify the Contractor prior to commencing such performance, the Subcontractor shall be solely responsible for such performance, the correction thereof, and costs, expenses, or damages arising therefrom.

4.11 Separate Contractors

4.11.1 Upon the Contractor's request, the Subcontractor shall review some or all of the terms and conditions of the contract between the Owner and Separate Contractors and the definition of scope of work for such contract to ensure that the interface between the Work and the work of the Separate Contractors is well and properly defined and that provisions contained therein fulfill the requirements for a coordinated and cooperative performance of work at the Project Site by all parties, including, but not limited to the Subcontractor and the Subcontractor's sub-subcontractors, without any gap or overlap in such performance. Within three (3) days of such request by the Contractor, the Subcontractor shall provide its written comments on such contract to the Contractor. If requested by the Contractor, the Subcontractor shall meet with the Contractor, the Owner or the Separate Contractor (or prospective Separate Contractor) to review and resolve any issues with respect to the interface between the Work and the work of such Separate Contractor.

4.11.2 The Subcontractor shall coordinate the Work with the work of Separate Contractors, including but not limited to delivery, offloading, storage, protection, hoisting and distribution of equipment and materials on the Project Site, in order to facilitate the timely, efficient and safe completion of the Work and the work of the Separate Contractors, which coordination shall afford such Separate Contractors reasonable opportunity for the installation, execution and storage of their respective work and materials, and shall otherwise be performed in such manner as the Owner and/or the Contractor may direct. The Subcontractor shall cooperate in good faith with the Separate Contractors in order for all contractors working on the Project to have the opportunity to complete their work on a timely, cost effective and safe basis. In addition, the Subcontractor shall cooperate with any prospective Separate Contractors in affording access to and information about the Project.

4.11.3 The Subcontractor shall perform all preparation of the Work required in order to receive the work of Separate Contractors and shall advise such Separate Contractors of any such preparation. The Subcontractor shall advise Separate Contractors of any preparation of their work required in order to receive the Work, and shall provide such Separate Contractors in a timely manner with location and scheduling plans and items to be built into their work.

4.11.4 If the Subcontractor or any of its sub-subcontractors or anyone for whom they may be liable or responsible cause damage to the Work or property of the Contractor, the Owner or the Separate Contractors, or to other work on the Project Site or the Project Site itself, the Subcontractor shall promptly remedy such damage at its sole cost and expense.

4.12 Shop Drawings, Samples and Product Data

4.12.1 By approving and submitting Submittals, the Subcontractor represents that it has determined and verified all materials, field measurements, and field construction criteria related thereto, or

will do so, and that it has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.

4.12.2 Subcontractor shall be responsible for the accuracy and conformity of its Submittals to all contract documents.

4.12.3 Incomplete Submittals or Submittals containing excessive errors will be returned unchecked and any delay caused thereby will be the responsibility of the Subcontractor.

4.12.4 Subcontractor shall prepare and deliver its Submittals to the Contractor in a manner consistent with the Project Schedule and in such time and sequence so as not to delay the Contractor or others in the performance of the Work. The Subcontractor shall allow not less than three (3) days for Submittal review by the Design Professional and such period of review shall not be a basis for any claim of delay in the progress of the Work.

4.12.5 Approval of any Submittal by Subcontractor shall not constitute an authorization of any deviation, substitution or change in the requirements of any documents unless express and specific written approval thereof is obtained from the Contractor and CUCF authorizing same.

4.13 Project Meetings

4.13.1 The Subcontractor shall schedule, organize and conduct meetings related to the Work at the Project Site or such other location as the Owner and/or the Contractor may direct, with the Contractor, Owner, the Design Professional and the applicable Subcontractors and Separate Contractors, as often as necessary but no less frequently than weekly, or as otherwise requested by the Owner and/or the Contractor. The Subcontractor shall prepare minutes of each such meeting for the Contractor's and the Owner's review, and upon the Owner's and the Contractor's approval, promptly furnish the same to all parties invited to attend such meeting.

4.14 Meetings

4.14.1 At the Owner's and/or the Contractor's request, the Subcontractor shall attend, through one or more of its Project personnel, all meetings related to the Project's design and approval. At the Owner's and/or Contractor's request, the Subcontractor shall attend meetings or public hearings relating to the Project. The Subcontractor shall review all meeting minutes for accuracy and provide written clarification to the Contractor, the Owner and other designated parties, when necessary. To the extent requested by the Owner and/or the Contractor, the Subcontractor shall prepare minutes of any meetings that the Subcontractor attends.

4.15 Compliance with Future Agreements

4.15.1 Excepting any agreements, provisions and requirements set forth in the Contract Documents, the Owner and/or the Contractor may, at its election, deliver to the Subcontractor the provisions that govern or otherwise pertain to the Project of any one or more agreements or instruments in respect of the Project. Subcontractor shall perform the Work and all other Services in compliance with any such provisions as advised by the Owner and/or the Contractor, and assist and cooperate with the Owner and the Contractor, upon the Owner's and/or the Contractor's request, in connection with the obligations of the Owner and/or the Contractor under such agreements that pertain to the Project. In the event that compliance with the terms of any such future agreements require an increase in the scope of the Work which is neither inferable from nor implied by the Drawings and Specifications, or a material increase in the Subcontractor's liability under this Agreement, the same shall be deemed to constitute a Scope Change under this Agreement.

4.16 Compliance with Law

4.16.1 The Subcontractor shall perform the Work and all other Services in compliance with, and ensure that the performance of the Work conforms to, the requirements of all Applicable Laws and Governmental Authorities.

4.17 Interpretation of Contract Documents

4.17.1 The Subcontractor shall assist the Owner, the Contractor, the Owner's Representative and the Design Professional when any Subcontractor requests interpretations of the Contract Documents, promptly give notice to the Contractor, the Owner and the Design Professional of any dispute, claim or potential claim which may arise during construction of the Project, assist in the resolution of any such dispute or claim in accordance with the Owner's and/or the Contractor's directions and make recommendations regarding settlement of such disputes and claims. In the event that any dispute arises between the Contractor and the Subcontractor or its sub-subcontractors or any Subcontractor and the Design Professional in connection with the Drawings or the Specifications, the interpretation of the Design Professional shall be binding, to the extent that such interpretation is consistent with, and reasonably inferable from, the Contract Documents.

4.17.2 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

4.18 Labor; Labor Relations; Requirements of Labor Law

4.18.1 The Subcontractor shall review the availability of all appropriate categories of labor for all phases of the Work and make recommendations for actions designed to minimize adverse effects of potential labor shortages.

4.18.2 The Subcontractor shall use all reasonable efforts to maintain good relations with labor unions as well as minority and other related interest groups to maintain peaceful labor relations and a trouble-free job site for the duration of the Work and advise the Owner and the Contractor of any anticipated problems in connection therewith. The Subcontractor shall make recommendations and render assistance to the Owner and/or the Contractor regarding labor disputes and jurisdictional disputes and advise the Owner and the Contractor regarding means and methods to avoid same, and, at the Owner's and/or the Contractor's direction, implement such means and methods. To the extent, if any, that the Owner and/or the Contractor chooses to give the Subcontractor directions regarding labor relations or any problems or disputes in connection therewith, the Subcontractor shall abide by such directions.

4.18.3 The Subcontractor shall select (and when applicable shall require its sub-subcontractors to so select) means and methods for completing the Work that, to the greatest extent possible, minimizes and avoids any added and unnecessary General Conditions Costs attributable to labor union or organization requirements. For example, and without limiting the generality of the foregoing, where it is possible to accomplish the work without "add-on" personnel such as "teamsters", labor foremen, elevator operators, master mechanics, etc., the Subcontractor and its sub-subcontractors shall be responsible for performing the Work without incurring any such avoidable costs.

4.18.4 Subcontractor shall not employ labor or means or use materials which may cause strikes or other labor disharmony, disputes or trouble with workmen employed by Contractor or other contractors, subcontractors or persons on any work in connection with the Project and shall conform to the labor policies of Contractor. Subcontractor shall immediately replace any workers reasonably objectionable to the contractor. Subcontractor agrees to save Contractor harmless from all loss and damages resulting from labor troubles or disputes occasioned by the labor or means or methods or materials employed by Subcontractor on the Project. The failure of Subcontractor to employ labor, or furnish material agreeable to Contractor and other trades employed on the Project shall be a ground for terminating this Agreement. Whenever an actual

or potential labor dispute delays or threatens to delay the performance of the Work, the Subcontractor shall immediately give written notice thereof to Contractor. Such notice shall be confirmed in writing and shall contain all information relevant to the dispute. Subcontractor shall promptly forward to Contractor and Owner copies of all communications pertaining in any way to Subcontractor's alleged or admitted failure to pay sums properly due to any union and/or local thereof.

4.19 Labor Law Compliance: Subcontractor shall strictly comply and shall take appropriate action to ensure strict compliance by its sub-subcontractors, of whatever tier, with the Labor Law. Such compliance is a material term of this Agreement. Subcontractor shall include the provisions of Article 4.19 in all its subcontracts for construction Work for the Project.

4.19.1 Subcontractor specifically agrees, as required by Labor Law Sections 220 and 220-d, as amended, that:

4.19.1.1 Hours of Work: No laborer, worker, or mechanic in the employ of Subcontractor or any other person doing or contracting to do the whole or a part of the Work contemplated by this Agreement shall be permitted or required to work more than eight (8) hours in any one (1) calendar day, or more than five (5) days in any one (1) week, except as provided in the Labor Law and in cases of extraordinary emergency including fire, flood, or danger to life or property, or in the case of national emergency when so proclaimed by the President of the United States of America.

4.19.1.2 In situations in which there are not sufficient laborers, workers and mechanics who may be employed to carry on expeditiously the Work contemplated by this Agreement as a result of such restrictions upon the number of hours and days of labor, and the immediate commencement or prosecution or completion without undue delay of the Work is necessary for the preservation of the Site and/or for the protection of the life and limb of the persons using the same, such laborers, workers, and mechanics shall be permitted or required to work more than eight (8) hours in any one (1) day; or five (5) days in any one (1) week; provided, however, that upon application of any contractor, the Director shall have first certified to the Director of Labor of the State of New York (hereinafter "Director of Labor") that such public Work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public; and provided, further, that such Director of Labor shall have determined that such an emergency does in fact exist as provided in Labor Law Section 220.2.

4.19.1.3 Failure of the Director to make such a certification to the Director of Labor shall not entitle Subcontractor to damages for delay or for any cause whatsoever.

4.19.1.4 Prevailing Rate of Wages: The wages to be paid for a legal day's work to laborers, workers, or mechanics employed upon the Work contemplated by this Agreement or upon any materials to be used thereon shall not be less than the "prevailing rate of wage" as defined in Labor Law Section 220, and as fixed by the Comptroller in the Schedule of Wage Rates attached to the Prime Agreement and in updated schedules thereof. The prevailing wage rates and supplemental benefits to be paid are those in effect at the time the Work is being performed.

4.19.1.5 Requests for interpretation or correction in the Information for Bidders include all requests for clarification of the classification of trades to be employed in the performance of the Work under this Agreement. In the event that a trade not listed in the Agreement is in fact employed during the performance of this Agreement, Subcontractor shall be required to obtain from the Agency the prevailing wage rates and supplementary benefits for the trades used and to complete the performance of this Agreement at the price at which the Agreement was awarded.

4.19.1.6 Minimum Wages: Except for employees whose wage is required to be fixed pursuant to Labor Law Section 220, all persons employed by Subcontractor and any sub-subcontractor, of whatever tier, in the manufacture or furnishing of the supplies, materials, or equipment, or the furnishing of work, labor, or services, used in the performance of this Agreement, shall be paid, without subsequent deduction or rebate unless expressly authorized by Law, not less than the sum mandated by Law. Minimum wages shall be the rates fixed by Federal Law and regulations.

4.19.2 Working Conditions: No part of the Work, labor, or services shall be performed or rendered by Subcontractor in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this Agreement. Compliance with the safety, sanitary and factory inspection Laws of the state in which the Work is to be performed shall be prima facie evidence of compliance with this article.

4.19.3 Prevailing Wage Enforcement: Subcontractor agrees to pay for all costs incurred by the Construction Manager and/or CUCF in enforcing prevailing wage requirements, including the cost of any investigation conducted by or on behalf of the Construction Manager, the Agency or the Comptroller, where the Construction Manager or CUCF discovers a failure to comply with any of the requirements of this Article 4.19 by Subcontractor. Subcontractor also agrees, that should it fail or refuse to pay for any such investigation, the Construction Manager is hereby authorized to deduct from Subcontractor's account an amount equal to the cost of such investigation.

4.19.3.1 The Labor Law Sections 220 and Section 220-d, as amended, provide that this Agreement shall be forfeited and no sum paid for any Work done hereunder on a second conviction for willfully paying less than:

- (a) The stipulated wage scale as provided in Labor Law Section 220, as amended, or
- (b) Less than the stipulated minimum hourly wage scale as provided in Labor Law Section 220-d, as amended.

4.19.3.2 For any breach of violation of either Working Conditions and Minimum Wage, the party responsible therefor shall be liable for liquidated damages, which may be withheld from any amounts due on any contracts with the Construction Manager and/or CUCF of such party responsible, or may be recovered in suits brought by counsel in the name of the Construction Manager and/or CUCF, in addition to damage for any other breach of this Agreement, a sum equal to the amount of any underpayment of wages due to any employee engaged in the performance of this Agreement. In addition, the Director shall have the right to cancel contracts and enter into other contracts for the completion of the original Agreement, with or without public letting, and the Subcontractor shall be liable for any additional costs incurred in connection therewith or arising therefrom. All sums withheld or recovered as deductions, rebates, refunds, or underpayment of wages hereunder, shall be held in a special deposit account and shall be paid without interest, on order of the Comptroller, directly to the employees who have been paid less than minimum rates of pay as set forth herein and on whose account such sums were withheld or recovered, provided that no claims by employees for such payments shall be entertained unless made within two (2) years from the date of actual notice to Subcontractor of the withholding or recovery of such sums by CUCF or the Construction Manager.

4.19.3.3 A determination by the Comptroller that Subcontractor and/or its sub-subcontractors, of whatever tier, willfully violated Labor Law Section 220 will be forwarded to the appropriate District Attorneys for review.

4.19.3.4 Subcontractor's noncompliance with this article and Labor Law Section 220 may result in an unsatisfactory performance evaluation and the Comptroller may also find and determine that Subcontractor willfully violated the New York Labor Law.

(a) An unsatisfactory performance evaluation for noncompliance with this article may result in a determination that Subcontractor is a non-responsible bidder/proposer on subsequent procurements with CUCF or any other public owner and thus a rejection of a future award of a contract with CUCF, as well as any other sanctions provided for by Law.

(b) Labor Law Section 220-b, as amended, provides that when two (2) final determinations have been rendered against a contractor within any consecutive six (6) year period determining that such contractor has willfully failed to pay the prevailing rate of wages or to provide supplements in accordance with the Labor Law and this article, whether such failures were concurrent or consecutive and whether or not such final

determinations concerning separate public work projects are rendered simultaneously, such contractor shall be ineligible to submit a bid on or be awarded any public work contract with CUCF for a period of five (5) years from the second final determination. If the final determination involves the falsification of payroll records or the kickback of wages or supplements, such contractor shall be ineligible to submit a bid on or be awarded any public work contract with CUCF for a period of five (5) years from the first final determination.

(c) Labor Law Section 220, as amended, provides that a contractor found to have violated this article may be directed to make payment of wages or supplements including interest found to be due, and such contractor may be directed to make payment of a further sum as a civil penalty in an amount not exceeding twenty-five (25%) percent of the total amount found to be due.

4.19.4 Subcontractor and each of its sub-subcontractors of whatever tier shall within ten (10) Days after mailing of a Notice of Award or written order, post in prominent and conspicuous places in each and every plant, factory, building, and structure where employees of Subcontractor and its sub-subcontractors engaged in the performance of this Agreement are employed, notices furnished by CUCF, in relation to prevailing wages and supplements, minimum wages and other stipulations contained in Section 220 of the Labor Law, and Subcontractor and its sub-subcontractors shall continue to keep such notices posted in such prominent and conspicuous places until Final Acceptance of the supplies, materials, equipment, or Work, labor, or services required to be furnished or rendered under this Agreement.

4.19.5 Subcontractor shall comply strictly with all of the provisions of Articles 4.19.5.1 through 4.19.5.4, and provide for all workers, laborers, and mechanics in its employ, the following:

4.19.5.1 Daily Site Sign-in Sheets: Maintain daily Site sign-in sheets, and require that its sub-subcontractors, of whatever tier, maintain daily Site sign-in sheets for their employees, which include blank spaces for an employee's name to be both printed and signed, job title, date started and Social Security number, the time the employee began work and the time the employee left work, until Final Acceptance of the supplies, materials, equipment, or work, labor, or services to be furnished or rendered under this Agreement unless exception is granted by the Comptroller upon application by the Agency. In the alternative, subject to the approval of the Director, Subcontractor may maintain an electronic or biometric sign-in system, which provides the information required by this Article 4.19.5.1; and

4.19.5.2 Individual Employee Information Notices: Distribute a notice, to each worker, laborer or mechanic employed under this Agreement, in a form provided by the Agency, that this Project is a public work project on which each worker, laborer or mechanic is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Worker, laborer, or mechanic includes employees of Subcontractor and all sub-subcontractors and all employees of suppliers entering the Site. Such notice shall be distributed to each worker before he or she starts performing any Work of this Agreement and with the first paycheck after July first of each year. At the time of distribution, Subcontractor shall have each worker, laborer or mechanic sign a statement, in a form provided by the Director, certifying that the worker has received the notice required by this article, which signed statement shall be maintained with the payroll records required by this Agreement; and

(a) Subcontractor and each sub-subcontractor shall notify each worker, laborer, or mechanic employed under this Agreement in writing of the prevailing rate of wage for their particular job classification. Such notification shall be given to every worker, laborer and mechanic on their first pay stub and with every pay stub thereafter; and

4.19.5.3 Site Laminated Identification Badges: Provide laminated identification badges which indicate the worker's, laborer's or mechanic's name, trade, employer's name and employment starting date (month/day/year). Further, require as a condition of employment on the Site, that each and every worker, laborer or mechanic wear the laminated identification badge at all times and that it may be seen by any representative of the Construction Manager and of CUCF; and

4.19.5.4 Language Other Than English Used On Site: Provide the Contracting Officer notice when three (3) or more employees (worker and/or laborer and/or mechanic) on the Site, at any time, speak a language other than English. The Contracting Officer will then provide Subcontractor such notices as may be required.

Subcontractor is responsible for all distributions under Article 4.19; and

4.19.5.5 Provision of Records: Subcontractor and each sub-subcontractor shall produce within five (5) days on the Site of the Work and upon a written order of the Director, the Director's Representative, the Contracting Officer, the Construction Manager or the Comptroller, such records as are required to be kept by this Article 4.19.5; and

4.19.5.6 If this Agreement is for an amount greater than \$1,000,000, checks issued by Subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Agency). For any subcontract for an amount greater than \$750,000, checks issued by a sub-subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Agency); and

4.19.5.7 The failure of Subcontractor or its sub-subcontractor(s) to comply with the provisions of Articles 4.19.5.1 through 4.19.5.6 may result in the Director and/or the Construction Manager declaring Subcontractor or its sub-subcontractor(s) in default and/or the withholding of payments otherwise due under the Agreement.

4.19.6 Subcontractor and its sub-subcontractors of whatever tier shall keep such employment and payroll records as are required by Section 220 of the Labor Law.

4.19.7 At the time Subcontractor makes application for each partial payment and for final payment, Subcontractor shall submit to the Construction Manager a written payroll certification, in the form provided by the Prime Agreement, of compliance with the prevailing wage, minimum wage and other provisions and stipulations required by Labor Law Section 220. This certification of compliance with the provisions of this article shall be a condition precedent to payment and no payment shall be made to Subcontractor unless and until each such certification shall have been submitted to and received by the Construction Manager and the Director.

4.19.8 This Agreement is executed by Subcontractor with the express warranty and representation that Subcontractor is not disqualified under the provisions of Section 220 of the Labor Law for the award of the Agreement.

4.19.9 Any breach or violation of any of the foregoing shall be deemed a breach or violation of a material provision of this Agreement, and grounds for cancellation thereof by the Construction Manager and/or by CUCF.

4.20 Regulatory Submissions and Governmental Hearings

4.20.1 The Subcontractor shall assist in completing the relevant documents and schedules for any regulatory submissions required for any local, state or federal agency approvals. The Subcontractor shall attend and participate in, through its project manager or such other Key Personnel reasonably acceptable to the Owner and the Contractor, all hearings as required by the Owner and/or the Contractor, including those concerning violations issued by any Governmental Authorities.

4.21 Project Labor Agreement:

4.21.1 Subcontractor acknowledges that CUCF intends to direct the Construction Manager to enter into a project labor agreement ("PLA"), as described in New York Labor Law Section 222, and that the Construction Manager has or will enter into a PLA with respect to the Project. Subcontractor agrees that the PLA shall govern the relationship among CUCF, the Construction Manager, Subcontractor and labor with respect to the Work, and, accordingly, Subcontractor shall execute the PLA, when, as and in the form and substance executed by the Construction Manager. Subcontractor executing the PLA is and shall be a condition precedent to the performance of any Work and payment to Subcontractor. Subcontractor shall not perform any Work or be entitled to any payment and Construction Manager shall not be required to make any payment hereunder until and unless Subcontractor shall execute the PLA and deliver executed copies thereof to the Construction Manager. Subcontractor shall require its sub-subcontractors and suppliers of

whatever tier to execute the PLA or, if permitted thereunder, a Letter of Assent in the form and substance provided for in the PLA, prior to the performance of any labor or the provision of any services or materials to the Project, and shall also require such sub-subcontractors to include a requirement in any agreement with their respective lower tier subcontractors and suppliers become signatory to and bound by the PLA, either directly or, if permitted under the PLA, by executing a Letter of Assent in the form and substance provided for in the PLA. Subcontractor shall not, under any circumstances, further subcontract any Project Work to a person, firm or corporation that is not or does not agree to become party to the PLA. The PLA, including without limitation the provisions of Article 7 thereof, shall apply to all Work of Subcontractor, including its sub-subcontractors and suppliers of whatever tier, with respect to the Project.

4.21.2 Construction Manager shall be an intended third-party beneficiary of Subcontractor's obligations under the PLA, all of which are hereby incorporated herein by reference. A breach by Subcontractor of the terms and conditions of the PLA shall be deemed for all purposes a breach of this Agreement, and shall entitle Construction Manager to the remedies set forth herein in addition to any remedies set forth in the PLA, including but not limited to Construction Manager's rights pursuant to Section 15.16 of this Rider.

4.21.3 Subcontractor agrees, for itself and on behalf of its sub-subcontractors and suppliers of whatever tier, to set aside and pay all benefits due or to become due to any Fund (as defined in the PLA). In the event that Subcontractor shall receive a delinquency notice from any Local or Union pursuant to or in accordance with the PLA, Subcontractor shall promptly forward a copy of such notice to Construction Manager. Subcontractor shall also require its sub-subcontractors and suppliers, of whatever tier, to promptly furnish copies of any such delinquency notice to the Construction Manager. Subcontractor agrees, for itself and for its sub-subcontractors and suppliers, of whatever tier, that in the event of any delinquency in the payment of employee benefits, in accordance with Article 11 of the PLA, Construction Manager shall withhold from any outstanding monies due to Subcontractor such amounts as the Fund or Union claim are due and may retain such amount for the benefit of the Fund upon submission of a Delinquency Notice pursuant to Article 11 of the PLA. Subcontractor further agrees that in such event the Construction Manager may also withhold from any amounts due Subcontractor such additional amounts as Construction Manager, in its sole but reasonable discretion, believes appropriate or necessary to cover all costs, damages, claims or expenses, including attorneys' fees and related expenses, as may be incurred by Construction Manager and arising from or in connection with such Delinquency Notice.

4.21.4 Subcontractor specifically agrees that if Construction Manager, Subcontractor or any Union (as that term is defined in the PLA) alleges a violation of Section 1 of Article 7 of the PLA, any of them may utilize the expedited procedure set forth in this paragraph 4.21.4 in lieu of, or in addition to, any actions at law or equity that may be brought. A party invoking this procedure shall notify J.J. Pierson or Richard Adelman, who shall alternate (beginning with Arbitrator J.J. Pierson) as Arbitrator under this expedited arbitration procedure. If the Arbitrator next on the list is not available to hear the matter within 24 hours of notice, the next Arbitrator on the list shall be called. Copies of such notification will be simultaneously sent to the alleged violator and the Council. The Arbitrator shall thereupon, after notice as to time and place to the Subcontractor, the Local Union involved, the Council and the Construction Manager, hold a hearing within 48 hours of receipt of the notice invoking the procedure if it is contended that the violation still exists. The hearing will not, however, be scheduled for less than 24 hours after the notice required by Article 7, Section 3, of the PLA. All notices pursuant to this paragraph may be provided by telephone, telegraph, e-mail, hand delivery, or fax, confirmed by overnight delivery, to the Arbitrator, Construction Manager, Subcontractor and Local Union involved. The hearing may be held on any day including Saturdays or Sundays. The hearing shall be completed in one session, which shall not exceed 8 hours duration (no more than 4 hours being allowed to either side to present their case, and conduct their cross examination) unless otherwise agreed. A failure of any Union or of the Construction Manager or Subcontractor to attend the hearing shall not delay the hearing of evidence by those present or the issuance of an award by the Arbitrator. The sole issue at such hearing shall be whether a violation of Article 7, Section 1 of the PLA occurred. If a violation is found to have occurred, the Arbitrator shall issue a Cease and Desist Award restraining such violation and serve copies on the Subcontractor and Union involved. The Arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages (any damages issue is reserved solely for court proceedings, if any.) The Award shall be

issued in writing within 3 hours after the close of the hearing, and may be issued without an Opinion. If any involved party desires an Opinion, one shall be issued within 15 calendar days, but its issuance shall not delay compliance with, or enforcement of, the Award. The Owner and Construction Manager (or such other designee of the Owner) may participate in full in all proceedings under this paragraph 4.21.4. An Award issued under this procedure may be enforced by any court of competent jurisdiction upon the filing of the PLA together with the Award. Notice of the filing of such enforcement proceedings shall be given to the Union or Subcontractor involved, and the Construction Manager. Any rights created by statute or law governing arbitration proceedings which are inconsistent with the procedure set forth in this paragraph 4.21.4, or which interfere with compliance thereto, are hereby waived by the Subcontractor. The fees and expenses of the Arbitrator shall be equally divided between the involved parties. For purposes of this paragraph 4.21.4, all capitalized terms not defined in this Rider shall have the meaning set forth in the PLA. Procedures contained in Article 9 of the PLA shall not be applicable to any alleged violation of Article 7 of the PLA, with the single exception that an employee discharged for violation of Section 1 of Article 7 of the PLA may have recourse to the procedures of Article 9 therein to determine only if the employee did, in fact, violate the provisions of Section 1 of Article 7; but not for the purpose of modifying the discipline imposed where a violation is found to have occurred.

4.21.5 Except as set forth in paragraph 4.21.4, above, any question, dispute or claim arising out of, or involving the interpretation or application of, the PLA (other than jurisdictional disputes or alleged violations of Article 7, Section 1 of the PLA) shall be considered a "grievance" and shall be resolved pursuant to the exclusive procedure described in Article 9 of the PLA, provided, in all cases, that the question, dispute or claim arises during the term of the PLA. Accordingly, and only to the limited extent set forth in this paragraph 4.21.5 and in Article 9 of the PLA, Subcontractor hereby consents, and shall require its sub-subcontractors and suppliers of whatever tier to consent, to the procedures, including arbitration, set forth in Article 9 of the PLA. Notwithstanding the foregoing, the procedures set forth in Article 9 of the PLA shall not apply to any question, claim or dispute other than those which are explicitly set forth therein. Any other question, claim or dispute shall be determined in accordance with the dispute resolution provisions set forth in this Rider.

4.22 Legal Proceedings

4.22.1 Subcontractor shall assist and cooperate with the Owner and/or the Contractor in any legal actions or proceedings that may arise out of or relate to the Work, including appearances and testimony, as reasonably necessary. Notwithstanding the foregoing, and without limiting any other provision in this Agreement, the Subcontractor acknowledges that the resolution and/or satisfaction of any violations issued by any Governmental Authority shall be the sole responsibility (and at the sole expense) of the Subcontractor.

ARTICLE 5 - REPORTING REQUIREMENTS

5.1 General

5.1.1 The Subcontractor shall prepare and maintain an on-site record keeping system, including daily logs of all Changes in the Work, revisions to the Project Schedule, daily manpower and trade breakdowns, shop drawing logs, material lists and monthly job-progress reports. In addition, the Subcontractor shall provide and utilize project management software acceptable to the Owner and the Contractor to upload and manage all Project-related documents and correspondence. Copies of all correspondence pertaining to the Work shall be maintained by the Subcontractor and made available at all reasonable times to the Owner and the Contractor. The Subcontractor shall provide to the Owner and the Contractor copies of all correspondence related to the Work or the Project that was sent by or to the Subcontractor.

5.2 Daily Report

5.2.1 The Subcontractor's superintendent shall daily submit a Daily Report specifically detailing activities of the Subcontractor; ongoing trade work performed; daily and cumulative summaries of materials-

in-place; names of all on-site companies performing Work as a Subcontractor, sub-subcontractor or supplier, including the Subcontractor; individual man counts by company, accident notification, job site inspections by testing agencies or outside regulating agencies, description of weather problems encountered and deficiencies noted, and a one-day look-ahead schedule containing a concise statement of the portions of the Work planned for the following work day.

5.3 Weekly Report

5.3.1 The Subcontractor shall record the progress of the Work and submit Weekly Reports, along with the minutes of weekly Project Meetings prepared pursuant to Section 4.14.1 to the Owner, each of which shall include the following:

- a. Status of Submittals made by the Subcontractor and its sub-subcontractors and under review by the Design Professional.
- b. A listing of all outstanding requests by the Subcontractor and its sub-subcontractors or Subcontractors to the Design Professional for information or interpretations of the Construction Documents (also referred to as "RFI's").
- c. Logs of all approved, pending and potential Change Orders.
- d. A two-week look-ahead schedule reflecting the portions of the Work to be performed and Submittals to be submitted in the upcoming two week period.

5.4 Monthly Report

5.4.1 The Subcontractor shall submit Monthly Reports to the Owner and the Contractor, each of which shall include the following:

- a. a concise statement of the outlook for meeting scheduled dates;
- b. an indication of the change in outlook from previous Monthly Reports and reasons for the change;
- c. a concise statement of significant progress on major items of Work during the report period;
- d. an itemized statement of the amount paid during the reporting period, and the aggregate amount paid to date, by the Subcontractor to each of its sub-subcontractor under their respective Sub-subcontract, the then current Sub-sub contract price under each Sub-subcontract (i.e., the original price as the same may have been adjusted, from time to time, by change orders or otherwise), and the retainage then held by the Subcontractor under each Sub-subcontract (which statement shall be provided for informational purposes only and shall not be construed to waive, modify or otherwise affect in any way the rights or obligations of the Contractor or the Subcontractor under this Agreement);
- e. a description of problem areas;
- f. current and anticipated delaying factors and their impact;
- g. explanation of corrective action taken or proposed if required;
- h. additional remarks necessary to further clarify the report;
- i. a detailed report on the Cost of the Work to date and the projected Cost of Work at Final Completion of the Project, including a breakdown for each trade of the Sub-subcontract amount, pending

Change Orders and other anticipated or projected costs, approved Change Orders, Work completed to date, payments to date, retention amounts, and payment this period;

j. monthly and accumulated tabulations of manpower expended and work-in-place for each major trade;

k. monthly and accumulated cash flow, and projections for the Cost of the Work and the Base Fee showing expected draw-downs through to Project completion, including a projected manpower and cash flow report for the duration of the Project that is correlated to the Project Schedule;

l. current status of the Project Schedule (updated to show to-date progress) and schedule reconciliation narrative identifying all deviations from the Project Schedule, reasons for said deviation, and schedule recovery or mitigation programs where appropriate, including specific efforts being put forth to correct any loss of time or delay and containing a one-month look-ahead schedule reflecting the portions of the Work to be performed in the upcoming month;

m. the current status of the procurement plan and purchasing schedule;

n. status of material procurement and fabrication;

o. a detailed listing (including original issue date and most current revision) of all Drawings and Specifications received by the Subcontractor to date, with those revised during the month noted;

p. a detailed listing of all sketches and clarifications received by the Subcontractor to date, which are in effect and being implemented in the field;

q. complete status of the Submittals, engineering and coordination of the Work;
and

r. a list of major items of incomplete or deficient work by the Subcontractor and its sub-subcontractors for each Sub-subcontractor and a summary of all Punch Lists.

5.4.2 Three (3) copies of the Monthly Report shall be provided by Subcontractor to the Contractor on or before the fifth (5th) day of each calendar month until Final Completion of the Project.

5.4.3 The Monthly Report shall be authored, and its accuracy certified by, the Subcontractor's Project Executive.

ARTICLE 6 - CHANGES IN THE WORK

6.1 Changes by the Owner

6.1.1 The Subcontractor acknowledges and agrees that the Contractor shall have the right, without nullifying any portion of the Contract Documents, to make numerous Changes. The Subcontractor acknowledges and agrees that the volume and/or extent of Changes ordered by the Contractor may be substantial and that the Subcontractor shall make no claims for additional compensation based solely on the number or extent of the Changes. The review of a proposed Change or Changes by the Subcontractor and any Sub-subcontractor, regardless of the number of such reviews, is included in the Subcontractor's Base Fee and the payments to Subcontractor under this Agreement, and shall not be included as an additional cost to the Contractor on any Change Order.

6.1.2 Changes may be initiated by the Contractor submitting to the Subcontractor a Change Order Request setting forth in detail the nature of the Change. Within three (3) days after receipt of a Change Order Request, the Subcontractor shall furnish to the Contractor a Change Order Proposal. Each Change Order Proposal shall include a detailed estimate (on a drawing-by-drawing basis) prepared by the

Subcontractor of the projected costs relating to such Change. Time and material Change Orders shall be documented on a day-to-day basis within forty-eight (48) hours after covered Work is accomplished. If a Change Order Proposal is not delivered to the Contractor within such three (3) day period, the Subcontractor shall be deemed to have waived its right to make any claim for an extension of any Milestone Event or adjustment to the Subcontract Sum in connection with the Changes which are the subject of said Change Order Proposal or to recover the costs of such Changes. When a schedule of unit prices for additions to or deletions from the Work is made a part of this Agreement, and the Change Order Proposal contains unit pricing, such unit pricing shall conform to such schedule of unit prices. If the Change Order Proposal is in accordance with this Agreement and acceptable to the Contractor, a Change Order (as hereinafter defined) will be executed promptly by the Contractor and the Subcontractor.

6.1.3 If this Agreement provides for an adjustment to the Subcontract Sum or Milestone Events resulting from a Change but, within three (3) days after the issuance of the Change Order Proposal requesting any such adjustment, the Contractor and Subcontractor are unable to agree upon a Change Order with respect to such adjustments, the Contractor nevertheless shall have the right to issue a Directed Change Order directing the Subcontractor to proceed with the Work constituting such Change and, if applicable, providing for any adjustment in the Subcontract Sum or Milestone Events resulting from such Change. Any such adjustment in (a) the Subcontract Sum shall, at the Contractor's election, equal either (i) the respective amounts therefor set forth in said Directed Change Order or (ii) the actual net increase or decrease in the costs attributable to such Change (in which latter case, such adjustments shall be determined and set forth in writing by the Contractor and the Subcontractor within fourteen (14) days after completion of that portion of the Work constituting such Change), or (b) the Milestone Events, if applicable, shall, at the Contractor's election, equal the period of time set forth in said Directed Change Order or, if no period is set forth therein, then the period of time, if any, fairly attributable, in the aggregate, to such Change which can be shown to have impacted the Milestone Events. Upon the Subcontractor's receipt of a Directed Change Order, the Subcontractor shall proceed with the Work constituting the Change provided for therein, promptly after such receipt or as otherwise may be required in said Directed Change Order. If the Subcontractor fails to object to a Directed Change Order or any portion thereof within seven (7) days after the Subcontractor's receipt of same, then the Subcontractor shall thereby be deemed to have (x) waived any right to object to any adjustments in the Subcontract Sum or Milestone Events provided for in such Directed Change Order or portion thereof, (y) agreed to any such adjustment, and (z) acknowledged that such adjustments, if any, shall constitute the complete and final consideration for all costs, claims, delays or damages incurred by the Subcontractor as a consequence of the Change provided for in such Directed Change Order or portion thereof; in such event, such Directed Change Order or portion thereof shall thereupon be deemed to constitute a Change Order for all purposes under this Agreement.

6.2 Extra Work: The price to be paid for Extra Work ordered pursuant to Article 26 of the Prime Agreement, and performed under this Agreement, shall be as set forth in this Article 6.2. For Extra Work where payment is by agreement on a fixed price in accordance with Article 26.2 of the Prime Agreement, the price to be paid for such Extra Work shall be the fair and reasonable cost of the items set forth below. For Extra Work where payment is on a time and material basis in accordance with Article 26.2 of the Prime Agreement, the price to be paid for such Extra Work shall be the actual and reasonable cost of the times set forth below.

6.2.1 Necessary materials (including transportation to the Site);

6.2.2 Necessary direct labor, the cost of which shall be comprised of the items set forth below:

(a) Prevailing wages and supplemental benefits, as defined in Labor Law Section 220;

(b) Payroll taxes, defined as State Unemployment Insurance ("SUI"), Federal Unemployment Insurance ("FUI") and payments pursuant to the Federal Insurance Contribution Act ("FICA"); and

(c) Workers' compensation insurance, as set forth in Article 12 and Exhibit G of this Agreement. The cost of workers' compensation insurance shall be based upon the average rate for such insurance for the applicable class(es) of labor, in accordance with the most recent schedule promulgated by the New York State Workers' Compensation Board.

6.2.3 Sales and personal property taxes, if any, required to be paid on materials not incorporated into such Extra Work;

6.2.4 Maintenance, operation and rental or, or reasonable rental value of Subcontractor-owned, necessary plant and equipment other than small tools. Subcontractor-owned equipment is defined to include equipment rental companies affiliated with or controlled by the Subcontractor, as determined by the Director. Payment rates for the use of Subcontractor-owned plant and equipment shall be in accordance with the provisions of Joint Directive No. 1 issued by the City of New York Mayor's Office of Construction and the Comptroller. The applicable director shall be that in effect at the time of the bid opening for the subcontract;

6.2.5 Necessary installation and dismantling of such plant and equipment (including transportation to and from the Site), if any;

6.2.6 Reasonable rental costs of non-Subcontractor-owned necessary plant and equipment other than small tools. In no event shall the amount paid to the Subcontractor for such rental exceed the lower of the actual value of such equipment or the book value of such equipment;

6.2.7 Any insurance coverage expressly required by CUCF for the performance of the Extra Work which is different than the types of insurance required by Article 12 and Exhibit G, other than workers' compensation insurance.

6.2.8 As full compensation for its overhead and profit in connection with Extra Work, the Subcontractor which performs the Extra Work shall be entitled to (i) twenty (20%) percent of the total of items in Articles 6.2.1, 6.2.2(a) (excluding, however, the premium portion of any overtime pay), 6.2.4 and 6.2.5; and (ii) five (5%) percent of the total of items in Articles 6.2.6 and 6.2.7. For the avoidance of any doubt, no percentage for overhead and profit will be allowed Subcontractor or any sub-subcontractor of whatever tier on any of the following: Payroll Taxes; workers' compensation insurance; the premium portion of overtime pay; and/or sales and personal property taxes. Overhead shall include without limitation, all costs and expenses in connection with administration, management, superintendence, small tools, insurance required by this Agreement other than workers' compensation insurance, and performance and payment bonds.

6.3 Where the Extra Work is performed in whole or in part by other than Subcontractor (i.e., by a sub-subcontractor of any tier), (1) the term "Subcontractor", when used in Article 6.2, above, shall be deemed to refer to the party performing the Extra Work; and (2) Subcontractor shall be paid, subject to audit by CUCF, the cost of such Work computed in accordance with Article 6.2 above, plus an additional allowance of five (5%) percent as the Subcontractor's overhead and profit.

6.4 Where a Change is ordered that involves both Extra Work and omitted or reduced Work, the subcontract price shall be adjusted, subject to audit by CUCF, in an amount based on the difference between the cost of such Extra Work and of the omitted or reduced Work. The cost of such Extra Work and of such omitted or reduced Work shall be computed based upon applicable subcontract unit prices. Where there are no applicable subcontract unit prices, the cost of such Extra Work and of such omitted or reduced Work shall be computed in accordance with the Articles 6.2.1 through 6.2.7. If the cost of such Extra Work exceeds the costs of such omitted or reduced Work, the subcontract price shall be increased by the difference, plus percentages for overhead and profit as provided in Article 6.3. If the cost of the omitted or reduced Work exceeds the cost of the Extra Work, then the subcontract price shall be reduced by the difference.

6.5 When the Construction Manager and the Contracting Officer agree upon another method of payment for Extra Work in accordance with Article 26.2 of the Prime Agreement, or for Extra Work ordered in connection with omitted work, such method, subject to audit, may, at the sole option of the Director, be substituted for the cost-plus-a-percentage method provided in Article 6.2 above; provided, however, that if the Extra Work is performed by a sub-subcontractor engaged by a Subcontractor, the Subcontractor shall not be entitled to receive more than an additional allowance of five (5%) percent for overhead and profit over the cost of such sub-subcontractor's Work as computed in accordance with Article 6.2.

6.6 Unless the parties agree on a lump-sum payment for Extra Work, requests for payment for Extra Work performed by Subcontractor or its sub-subcontractors, of whatever tier, shall be accompanied by signed time sheets, documenting by date the actual hours worked by specific personnel for whom payment is requested, and any other data as may be requested by the Director. Under an agreement for a lump-sum payment for Extra Work, Subcontractor shall furnish to the Construction Manager all documentation required for a requisition for payment for Work completed.

6.7 Overrun of Unit Price Item: The provisions set forth below shall apply to overruns of unit price items which the Construction Manager, through its Subcontractor, is directed to provide which is in excess of one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the bid schedule.

6.7.1 For any unit price item, Subcontractor will be paid at the unit price bid for any quantity up to one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the bid schedule. If during the progress of the Work the actual quantity of any unit price item required to complete the Work approaches the estimated quantity for that item, and due to errors, site conditions, changes in design, or any other reason, it appears that the actual quantity of any unit price item necessary to complete the Work will exceed the estimated quantity for that item by twenty-five (25%) percent, Subcontractor shall immediately notify the Construction Manager of such anticipated overrun. Subcontractor shall not be compensated for any quantity of a unit price item provided which is in excess of one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the bid schedule without written authorization from the Director's Representative.

6.7.2 If the actual quantity of any unit price item necessary to complete the Work will exceed one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the bid schedule, CUCF reserves the right, and Subcontractor agrees, to negotiate a new unit price for such item. In no event shall such negotiated new price exceed the unit bid price. If CUCF and Subcontractor cannot agree on a new unit price, then CUCF shall order the Construction Manager, and Subcontractor agrees, to provide additional quantities of the item on a time and material basis for the actual and reasonable cost as determined under this Article 6, but in no event at a unit price exceeding the unit price bid.

6.8 Omitted Work

6.8.1 Any Work, if this Agreement be a lump-sum subcontract, or, otherwise, if any part of a lump-sum item in this Agreement, is omitted by the Director pursuant to Article 33 of the Prime Agreement, the subcontract price, subject to audit by CUCF, shall be reduced by a pro-rata portion of the lump-sum bid amount based upon the percent of Work omitted, subject to Article 6.8.4. For the purpose of determining the pro rata portion of the lump sum bid amount, the bid breakdown submitted by Subcontractor shall be considered, but shall not be the determining factor.

6.8.2 If this Agreement is a unit price, lump-sum, or percentage-bid subcontract, and either the whole of a lump-sum item or units of any other item is omitted by the Director, no payment will be made therefore, except as provided in Article 6.8.4.

6.8.3 For units that have been ordered but are only partially completed, the unit price shall be reduced by a pro-rata portion of the unit price bid based upon the percentage of Work omitted, subject to Article 6.8.4.

6.8.4 In the event Subcontractor, with respect to any omitted Work, has purchased any non-cancelable material and/or equipment that is not capable of use except in the performance of this Agreement, and has been specifically fabricated for the sole purpose of this Agreement, but not yet incorporated into the Work, Subcontractor shall be paid for such material and/or equipment, as set forth below; provided, however, such payment is contingent upon Subcontractor's delivery of such material and/or equipment in acceptable condition to a location designated by CUCF.

6.8.4.1 Payment for such material and/or equipment shall be in accordance with Article 6.2, and the percentage for overhead and profit shall be five (5%) percent.

6.8.5 Subcontractor agrees to make no claim for damages or for loss of overhead and profit with regard to any omitted Work.

6.9 Claims by the Subcontractor

6.9.1 If the Subcontractor claims that it has incurred (a) an increase in the Subcontract Sum because of, but not limited to, (i) any order by the Contractor to stop the Work where the Subcontractor was not at fault, (ii) a suspension of the Work for the Contractor's convenience, or (iii) failure of payment by the Owner or the Contractor, or (b) a delay in achieving any of the Milestone Events by reason of a Change or an Unavoidable Delay, and this Agreement does not prohibit the Construction Manager from obtaining an increase in the Subcontract Sum by reason thereof, or being granted an extension of the applicable Milestone Event, as the case may be, by reason of such event, the Subcontractor shall make such claim as provided in Article 16 hereof.

6.9.2 The Subcontractor shall give the Contractor notice of any claim pursuant to Section 6.9.1 hereof (or otherwise) and a Change Order Proposal within seven (7) days after receiving actual knowledge concerning the occurrence of the event giving rise to such claim. Such notice shall be delivered by the Subcontractor before proceeding to execute the Work, except in an emergency endangering life or property, and shall be a condition precedent to any further consideration of the claim. No such claim shall be valid unless so made within said seven (7) day period. Any increase in the Subcontract Sum or extension of any Milestone Event resulting from such claim shall be authorized only by Change Order executed by both parties and approved and executed by the Director.

6.10 Change Orders

6.10.1 In the event the Contractor and Subcontractor agree on the scope of a Change, they shall execute a Change Order.

6.10.2 If unit prices are subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order or, as a result of several Change Orders, that the Subcontractor is able to realize lower unit prices, the applicable unit prices shall be decreased to equal such lower price.

6.11 Changes Authorized by the Contractor

6.11.1 Only the Contractor shall have authority to order Field Proceed Orders, which shall essentially be clarifications of the Contract Documents, not involving an increase in the Subcontract Sum or an extension of any Milestone Event and not inconsistent with the intent of the Contract Documents. Such Field Proceed Orders may be effected by written order and shall be binding on the Contractor and the Subcontractor. If the Subcontractor believes that any Field Proceed Order will result in an increase in the Subcontract Sum or a delay in achieving any Milestone Event, then the Subcontractor shall notify the Contractor of the same immediately and shall not proceed with performing the work ordered in such Field Proceed Order without first obtaining the Contractor's written consent thereto.

6.12 Owner Approval Required; Audit Rights

6.12.1 Any proposed change order to any subcontract(s) and any purchase order(s) hereunder are subject to the prior written approval of the Director. The Director will make all final determinations regarding change orders, modifications, and additions to the Construction Documents, which determination shall be binding upon Subcontractor, subject only to the dispute resolution procedures set forth in the Prime Agreement and in Article 16 of this Agreement.

6.12.2 All change orders are subject to audit. In any event an audit reveals that the costs for or scope of the change order work or of the Extra Work was stated inaccurately, CUCF and the Construction Manager shall recoup the amount by which the costs were inaccurately stated by proportionately reducing the price of the change order or the contract price. This remedy is not exclusive, and is in addition to all other rights and remedies of CUCF and the Construction Manager.

6.13 Change Management Requirements

6.13.1 The Subcontractor shall provide for the Subcontractor's use all written procedures to follow and form documents to use in connection with Changes and with claims by the Subcontractor for cost or schedule adjustments. The Subcontractor shall comply with such procedures and utilize such form documents, and cause the Sub-subcontractors to do the same, with respect to any such Changes or claims.

ARTICLE 7 - TESTS AND INSPECTIONS

7.1 Tests and Inspections

7.1.1 Except for those controlled inspections that are not typically provided by contractors for architectural and structural issues, the Subcontractor shall identify those tests and inspections as shall be necessary or appropriate, and shall cause to be conducted by an independent testing laboratory or entity acceptable to the Owner and the Contractor, or by the appropriate Governmental Authority, all such tests and inspections and any additional inspections that the Owner, the Contractor or a Governmental Authority may require. The Subcontractor shall give the Owner, the Contractor and the Design Professional timely notice of when and where tests and inspections are to be made so that they may observe the same. With respect to controlled inspections, the Owner and/or the Contractor, through the appropriate Owner Specialist, shall identify and cause to be conducted such inspections, and shall promptly notify Contractor of same and the Contractor shall in turn notify the Subcontractor.

7.1.2 If any such tests or inspections reveal failure of any portion of the Work to comply with requirements established by the Contract Documents, the Subcontractor shall bear the costs of these tests and inspections and all costs made necessary by such failure, including the cost of repeated procedures and compensation for the services and expenses of the Design Professional and of the Contractor's personnel.

7.1.3 Acceptance by the Contractor, the Owner or the Design Professional of test data or inspections of any portion of the Work shall not relieve Subcontractor of its obligation to cause the Work to be performed in accordance with the Contract Documents.

7.1.4 With respect to all inspections, including controlled inspections, the Subcontractor shall provide access to the Work for representatives and inspectors of Governmental Authorities and independent testing laboratories to inspect and observe the Work, and, if requested by the Owner and/or the Contractor, shall give such representatives timely notice of the time and location of scheduled tests and inspections.

ARTICLE 8 - SUB- SUBCONTRACTORS

8.1 Work of Sub-subcontractors

8.1.1 All portions of the Work that the Subcontractor does not perform with its own forces, and all materials and equipment that the Subcontractor does not supply, shall be performed or supplied by sub-subcontractors pursuant to written agreements, each and all of which shall be subject to the Owner's and the Contractor's prior approval as set forth herein.

8.2 Approvals of Sub-subcontracts

8.2.1 The Contractor and the Owner shall have the right to reject any proposed sub-subcontractor for any reason or no reason. The Contractor and the Owner shall also have the right to require Subcontractor to perform any of the Work itself or purchase any of the materials for the Work directly.

8.2.2 The Construction Manager shall direct all bidders to deliver their bids to the Construction Manager. Each such bid shall include the bidder's proposed schedule of values. The Construction Manager shall forward a copy of all bids received to the Owner. The Owner shall have the right, at its election, to actively participate with the Construction Manager in the solicitation and selection of proposed subcontractors, including bid solicitations, bid reviews, the review of proposed schedules of values, and subcontractor interview meetings, evaluations and negotiations. Notwithstanding approval by the Contractor and/or the Owner, the Subcontractor shall be solely responsible to the Contractor for the performance of each sub-subcontractor.

8.2.3 Each Sub-subcontract shall be prepared based on the form of sub-subcontract acceptable to the Construction Manager and CUCF. Each Sub-subcontract shall contain provisions substantially similar to Articles 6, 11, 12, 13, 19 and Sections 2.3.3, 4.3 and 8.3.2 of this Agreement. In addition, the Subcontractor has read, acknowledges and agrees to be fully bound by Sections 8.2.7.1, 8.2.7.2 and 8.2.7.3 set forth below and further agrees that each Sub-subcontract shall contain a provision substantially similar to the following:

8.2.7.1 The Sub-subcontractor acknowledges and agrees that the Contractor, and following an assignment to the Owner, the Owner, shall have the right to assign this Agreement to any party designated by the Owner ("Subcontract Assignee"), and upon and after any such assignment Subcontractor shall render full performance hereof to such Sub-subcontract Assignee and such Sub-subcontract Assignee shall succeed to all of the Contractor's rights hereunder and shall perform all of the Contractor's obligations hereunder arising from and after such assignment. Upon an assignment of this Agreement by the Owner, the Owner shall be deemed released from any and all liability under this Agreement provided that the assignee thereunder is acceptable to the Sub-subcontractor, in the exercise of its reasonable judgment.

8.2.7.2 With respect to the Work to be performed and furnished by the Subcontractor hereunder, the Subcontractor agrees to be bound to the Contractor by each and all of the terms and provisions of this Agreement, the Prime Agreement between the Owner and the Construction Manager/Contractor (the "Prime Agreement") and the other Contract Documents, and to assume toward the Contractor all of the duties, obligations and responsibilities that the Contractor by the Prime Agreement and those other Contract Documents assumes toward the Owner, and the

Subcontractor agrees further that the Contractor shall have the same rights and remedies as against the Subcontractor as the Owner under the terms and provisions of the Prime Agreement and the other Contract Documents has against the Contractor with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full.

8.7.2.3 The Prime Agreement shall continue to be a Contract Document and incorporated herein and a part hereof, and Subcontractor shall continue to be bound by the Prime Agreement, as provided in the immediately preceding paragraph, notwithstanding any termination, expiration or cancellation of the Prime Agreement, or the assignment or reassignment of the Prime Agreement by the Contractor or the Owner.

8.2.4 Upon demand by the Owner and/or the Contractor, the Subcontractor shall assign any one or more Sub-subcontracts to the Contractor or the Owner or the Owner's designee, and each such Sub-subcontract shall therefore provide that it is freely assignable by Subcontractor to Contractor and by Contractor and its assignees.

8.2.5 Subcontractor shall make available for review by each proposed sub-subcontractor, prior to the execution of the Sub-subcontract, this Agreement and the Prime Agreement (redacted as requested by the Contractor, the Owner or the Owner's Representative or as the Contractor otherwise deems appropriate), and those Drawings and Specifications pertinent to its scope of work. The Subcontractor shall require each sub-subcontractor to similarly make available for review by their respective sub-subcontractors and proposed sub-subcontractors applicable portions of such documents.

8.2.6 All Sub-subcontracts (and sub-sub-subcontracts) shall be submitted to the Owner and the Contractor prior to being executed by the Contractor or the Subcontractor. The Owner and/or the Contractor shall have the right, but not the obligation, to review and approve all Sub-subcontract and sub-sub-subcontract scopes of work, and all Sub-subcontracts and sub-sub-subcontracts prior to execution thereof. Neither the submission of a Sub-subcontract or sub-sub-subcontract to the Owner and/or the Contractor, nor the review or approval of a Sub-subcontract or sub-sub-subcontract by the Owner and/or the Contractor, shall be deemed to (a) relieve the Subcontractor of its duty of due diligence in selecting a sub-subcontractor, (b) relieve the Subcontractor from any of its obligations under this Agreement and the Prime Agreement, (c) establish privity of contract between the Owner and/or the Contractor and any sub-subcontractor or otherwise create any rights in favor of any sub-subcontractor as against the Owner and/or the Contractor, (d) impose on the Owner and/or the Contractor any liability arising from, or in connection with, such Sub-subcontracts or sub-sub-subcontracts, or (d) make the Owner and/or the Contractor responsible for a Subcontractor's or sub-subcontractor's performance or failure to perform.

8.2.7 The Subcontractor shall execute Sub-subcontracts in the Subcontractor's own name and on its own behalf and not as agent for the Owner and/or the Contractor. The Subcontractor shall furnish the Owner and the Contractor with a duplicate original of each fully executed Subcontract promptly after its execution and prior to the sub-subcontractor thereunder commencing performance of the portion of the Work contemplated thereby.

8.3 Termination of a Sub-subcontract

8.3.1 The Subcontractor shall not terminate a Sub-subcontract or replace a Sub-subcontractor without the prior written approval of the Contractor, which shall not be unreasonably withheld.

8.3.2 The Owner and/or the Contractor shall have the right to request termination of any Sub-subcontract upon the occurrence of a default by the Sub-subcontractor thereunder. In addition, the Owner and/or the Contractor shall have the right to request termination of any Sub-subcontract for convenience (i.e., for any reason or for no reason at all). In the event of any request for termination by the Owner and/or the Contractor under this Section 8.3.2, the Subcontractor shall terminate such Sub-subcontract upon receipt of such request for termination or as soon as practicable given the circumstances at the time of such request for termination but in such instance no longer than two (2) days after receipt of such request for termination.

In the event of any termination of any Sub-subcontract, the terminated Sub-subcontractor shall not be entitled to anticipated or lost profits or overhead as a result of such termination.

8.4 Disputes between Sub-subcontractors

8.4.1 The Subcontractor shall resolve all disputes between the Sub-subcontractors relating to the performance of their Work or the furnishing of materials, supplies or equipment in connection with the Work, without interruption or delay to the Project, and have all Sub-subcontractors agree to continue performance of their work notwithstanding any such dispute.

8.5 Subcontractor's Responsibility

8.5.1 The Subcontractor shall be responsible to the Owner and the Contractor for the acts and omissions of its agents and employees and all Sub-subcontractors, and their respective agents and employees.

8.6 Coordination of Sub-subcontractors

8.6.1 The Subcontractor shall be responsible for scheduling, logistics, and physical coordination of the Sub-subcontractors, and shall ensure the harmony between Sub-subcontractors (and any sub-sub-subcontractors, etc.), the Contractor, any Separate Contractors and any other Subcontractors, any of Owner's invitees, guests, tenants or any of such tenants' invitees and/or guests.

ARTICLE 9 - PROJECT DOCUMENTS

9.1 As-built Drawings

9.1.1 The Subcontractor shall prepare and shall cause each of its sub-subcontractors to prepare, from time to time or as otherwise required by the Owner and/or the Contractor, As-Built Drawings of its Work on CADD Disks, which "as-built" drawings shall record (i) approved changes to the Drawings and to the Work, whether accomplished by Change Orders, Field Proceed Orders, or otherwise, and (ii) the exact locations of all concealed Work and the size, routing and elevation thereof. The Subcontractor shall compile, review and conform such "as-built" drawings of the Work on CADD Disks, which include all of the Subcontractors' As-built Drawings, from time to time or as otherwise required by the Owner and/or the Contractor.

9.2 Project Documents

9.2.1 In addition to the requirements imposed by Applicable Laws, the Subcontractor shall maintain at the Project Site a complete and updated set of the Project Documents.

9.3 Ownership and Use of Project Documents

9.3.1 The Subcontractor shall and does hereby assign, and shall cause each Sub-subcontractor to assign, to the Owner and the Contractor all of the respective right, title and interest of the Subcontractor and such Sub-subcontractor, if any, in, to and under any and all Project Documents, including all trademarks, copyright privileges and other tangible and intangible rights attaching thereto. The Subcontractor shall deliver the Project Documents to the Owner and the Contractor, from time to time, as required under this Agreement and the Prime Agreement or as otherwise required by the Owner and/or the Contractor or, if not delivered prior to Final Completion of the Project, then upon such Final Completion and as a condition to Final Payment. The Project Documents shall be delivered to the Owner and the Contractor in the same manner as close-out documents are required to be delivered under this Agreement. The Subcontractor shall also execute, and cause all sub-subcontractors to execute, any and all documents and releases, and take all actions necessary, or otherwise required by the Owner and/or the Contractor, to establish, document and protect the right, title and interest of the Owner and the Contractor in the Project Documents, including, if

requested by the Owner and the Contractor, an assignment of all copyrights and copyright privileges. The Subcontractor may retain copies of the Project Documents for its files. The Owner and/or the Contractor shall have the right to use the Project Documents for the completion of the Services or the Work by others.

ARTICLE 10 - PROJECT SCHEDULE

10.1 Project Schedule

10.1.1 The Project Schedule shall be produced using Primavera P3 software in "CPM" format with monthly updates in ".prx" format, and shall set forth the Milestone Events, including the Substantial Completion Date. The Project Schedule shall fully describe the intended method of accomplishing all the various portions of the Work and related activities necessary to complete the Work. The Project Schedule shall demonstrate, to the reasonable satisfaction of the Owner and the Contractor, an expeditious, practicable and reasonable plan for achieving the Milestone Events, including the Substantial Completion of the Work. In no event shall the Project Schedule contain any extension of a Milestone Event or any other revisions which would result in any Milestone Event not being achieved, without in either such instance obtaining the prior written consent of the Owner and the Contractor to such extension or other revision.

10.1.2 The Project Schedule shall indicate the durations and sequencing of all activities of the Work and show the integration with the Work of the Project activities of the Owner the Owner's Representative, the Design Professional and the Separate Contractors, including, as appropriate:

- a. Permit and approval process.
- b. Verification of the assumptions in the Budget relative to the intended schedule.
- c. Dates for the receipt of design deliverables from the Design Professional required for subcontracting and procurement including sufficient time for the review and approval by the Owner and the Contractor of the design documents and the sub-subcontract bid packages.
- d. Activities related to the procurement of Subcontractors.
- e. A purchasing schedule including a listing of all long-lead material, building systems and equipment items and a schedule for the acquisition and delivery of such items.
- f. Activities of the Design Professional necessary for mock-up construction.
- g. A schedule for the engineering, Submittals submission, fabrication, testing, and delivery of all major components fabricated off-site.
- h. One or more "critical paths".
- i. Activities for coordination of the Work with the work of Separate Contractors, as applicable, including the Contractor and all other Subcontractors.
- j. Construction completion and closeout activities including appropriate time for Punch List completion.
- k. Activities related to approvals required to be obtained from Governmental Authorities.
- l. Commissioning activities including dates for commencement and completion of start up, testing, and commissioning of equipment and systems.

10.1.3 The Project Schedule shall indicate specific activities, durations, dependencies and sequencing and provide a critical path through the activities including identification of the Milestone Events.

To the extent required, the Project Schedule shall provide for phasing of the various activities as may be required to achieve the Owner's use or occupancy requirements. At the Owner's and/or Contractor's request, the Project Schedule shall be revised to include the work of Separate Contractors, the Contractor, and the other Subcontractors or other work being performed by or on behalf of the Owner or its tenants.

10.1.4 The Project Schedule shall contain dates for achievement of the various elements of the Work that would enable the Subcontractor to achieve all of the Milestone Events.

10.1.5 The Subcontractor shall prepare detailed trade-by-trade critical-path-method schedules for each sub-subcontract, providing for all purchasing, engineering, submittal, fabrication, delivery, construction, testing, commissioning and close-out activities. The Project Schedule shall be broken down into Sub-subcontract Schedules and the Project Schedule and sub-subcontract Schedules shall include identification of critical-path activities and early-start, late-start and finish dates. All sub-subcontract Schedules shall be integrated into the Project Schedule.

10.1.6 For critical, highly complex items of work or for such other elements of the Work as the Owner and/or Contractor may specify, the Subcontractor may be required to prepare additional, more detailed schedules consistent with the Project Schedule.

10.1.7 The Subcontractor shall keep the Contractor, the Owner, the Owner's Representative, the Design Professional and all of the sub-subcontractors fully and completely informed at all times of the content of the Project Schedule, other relevant schedules and all other scheduling information applicable to or which may affect the work of the sub-subcontractors. This information shall in all cases be furnished to the sub-subcontractors in sufficient time to allow them to adjust their plans so as to meet all required performance dates relative to their portions of the Work. The Contractor, the Owner and the Design Professional shall be entitled to rely fully on the content of the Project Schedule in planning and scheduling performance of their obligations under the Contract Documents or of interrelated work by their own forces or Separate Contractors. At least once a month, or at other intervals required by the Owner and/or the Contractor, the Subcontractor shall advise the Owner and the Contractor of the status of the Work on marked copies of the then current Project Schedule. If any of the Work is not on schedule as set forth in the Project Schedule, the Subcontractor shall immediately advise the Owner and the Contractor in writing of a proposed action to bring the Work back on schedule.

10.1.8 The Subcontractor shall submit immediate reports – within forty-eight (48) hours after the time when it knows or should know of any cause which might under any circumstances result in delay – of any delay in the Work, which reports shall identify the cause for the delay, the estimated duration and cost of the delay, and a specific remedy of the delay. To the extent possible, notifications shall be submitted to the Owner and the Contractor in advance of the anticipated delay to allow for all reasonable action on behalf of all involved parties to achieve a resolution minimizing schedule or cost impact.

10.1.9 The Subcontractor shall submit monthly an updated Project Schedule to the Contractor and the Owner with each Monthly Report, which shall include, at the minimum:

- Project;
- a. actual versus baseline percent completion for each portion of the Project and the entire Project;
 - b. actual versus baseline Work in place for the entire Project; and
 - c. any change in any critical path.

10.2 Time is of the Essence for Performance of the Work.

10.2.1 The Subcontractor shall perform, and cause to be performed, the Work in compliance with the Project Schedule. Time shall be of the essence for all dates, including but not limited to each interim

milestone date, shown on the Project Schedule and all other dates and deadlines provided for in this Agreement with respect to the performance of the Work.

10.2.2 The Subcontractor shall perform the Work, and cause the Work to be performed, in a diligent manner and shall perform and cause to be performed the several parts thereof at such times and in such order as the Owner and/or the Contractor may direct. The Subcontractor shall maintain, and cause to be maintained, the progress of the Work so as to achieve Substantial Completion of the Project by the Substantial Completion Date and the other Milestone Events.

10.2.3 The Subcontractor shall arrange to have materials and products manufactured and available in a timely manner such that neither commencement nor performance of the Work will be delayed.

10.2.4 The Subcontractor shall provide, and cause to be provided, an adequate workforce and sufficient equipment, materials, tools and supplies so that the Work is performed in compliance with the Project Schedule. The Subcontractor shall perform the Work, and cause the Work to be performed, during normal working hours except as may be provided otherwise in the Contract Documents. If any critical path element of the Work (including any Milestone Event) is not achieved by its corresponding critical path date, or the Owner and/or the Contractor believes, in the exercise of its reasonable judgment, that any critical path element of the Work will not be achieved by its corresponding critical path date, then, upon written notice from the Owner and/or the Contractor, the Subcontractor shall cause its employees and Sub-subcontractors, at its own expense and at no additional cost to the Construction Manager or to CUCF, to make up for the time lost and to assure completion of the Project in accordance with the Project Schedule, using various means and methods to meet such obligation including, without limitation, performing and working at hours and on days, in addition to the normal working hours and normal working days, whatever overtime work or shift work is necessary, working additional shifts, working additional crews during all shifts, stacking trades, and accelerating shipments of goods in order to return such critical path elements of the Work to being in compliance with the Project Schedule. To the extent that the Subcontractor is unable to obtain any permits or approvals required for overtime work from Governmental Authorities, it shall revise its means and methods of construction, including increasing the amount of labor and equipment, in order to achieve such compliance. If the Subcontractor fails to take prompt and adequate corrective action to bring the Work back on schedule to the satisfaction of the Owner and/or the Contractor, the Owner and the Contractor reserve the right, on three (3) days notice to the Subcontractor, to perform such Work as it deems necessary and to backcharge the cost thereof against payments due to the Subcontractor under this Agreement.

10.3 Separate Contractors

10.3.1 The Subcontractor shall not cause any unnecessary hindrance or delay to the progress of the work being performed by Owner's tenants and/or Separate Contractors and/or the Contractor and/or the other Subcontractors. If any Owner's tenants or Separate Contractor and/or the Contractor and/or the other Subcontractors sustains any damage through any act or omission of the Subcontractor, the Subcontractor shall reimburse such tenant or Separate Contractor and/or the Contractor and/or the other Subcontractors, on demand, for all such damages and shall indemnify and hold harmless the Owner and/or the Contractor from any Losses incurred by the Owner and/or the Contractor by reason of such damage.

10.4 Substantial Completion

10.4.1 Substantial Completion is that point in the progress of the Work when the Work or designated portion thereof, as certified by the Architect and/or the Owner's Representative, is sufficiently complete in accordance with the Contract Documents, with all needed systems and equipment operational, to enable the Owner or prospective tenants of the Building, to use and occupy the Project Site or the agreed, defined portion of the Project Site, for its intended use, and (i) only minor punch list items or similar minor corrective work remains to be completed that do not adversely affect the capability of the Project Site or the designated portion thereof to operate and function safely in the ordinary course of business (ii) all Certificates shall have been issued and (iii) all other, additional or different requirements set forth in Section 10.4 of the Prime Agreement, which are applicable to the Work of Subcontractor, have been satisfied, including without limitation, submission by Subcontractor of a final verified statement of claims as

described and in accordance with Article 42 of the Prime Agreement. Without limiting the foregoing, the issuance of a temporary certificate of occupancy shall be a condition precedent to Substantial Completion.

10.4.2 The Subcontractor shall arrange for and manage building department inspections and applications and cooperate with Owner and the Contractor, as necessary, to procure the Certificates and shall thereafter procure and deliver the same to the Contractor.

10.4.3 When the Subcontractor considers that the Work, or a portion thereof which the Owner and Contractor agrees to accept separately, has achieved Substantial Completion, the Subcontractor shall prepare and submit to the Contractor, the Owner and the Architect a comprehensive list of items to be completed or corrected and the timeframe for such completion or correction. The Subcontractor shall proceed promptly to complete and correct the items on such list. Failure to include an item on such list does not alter the responsibility of the Subcontractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Subcontractor's list, the Architect and/or the Owner's Representative and/or the Contractor will make an inspection to determine whether the Work or designated portion thereof has achieved Substantial Completion. If such inspection discloses any item other than minor punch list or corrective work, whether or not included on the Subcontractor's list, which is incomplete or not in accordance with the requirements of the Contract Documents, the Subcontractor shall, as a condition to the issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect or the Owner's Representative and/or the Contractor. The Subcontractor shall then submit a request for another inspection by the Architect and/or the Owner's Representative and/or the Contractor, as the case may be, to determine whether Substantial Completion shall have occurred. The cost of all subsequent inspections requested by the Subcontractor shall be paid by the Subcontractor, at its sole cost and expense.

10.4.4 When the Work or designated portion thereof shall have achieved Substantial Completion and the Owner has so concurred, the Architect will issue a Certificate of Substantial Completion and the Punch List. The Subcontractor shall (a) review the Punch List with the Owner's Representative and the Architect and the Contractor; (b) schedule, coordinate, and perform or cause to be performed the prompt correction and completion of the items on the Punch List; and (c) institute a comprehensive and detailed Punch List management system that includes repetitive follow-up with all sub-subcontractors, the Architect and others as required until the Contractor and the Owner have accepted the correction of each deficient item on the Punch List. Punch List tracking documents shall be issued on a regular basis no less frequently than once a week. The Subcontractor shall perform all Punch List work at such times and in such a manner so as to not unreasonably interfere with the use or occupancy of the Project Site.

10.4.5 Until Substantial Completion of the Work, and to the extent stated in the Contract Documents, the Subcontractor shall be responsible for security, maintenance, heat, utilities, damage to the Work and insurance. The Certificate of Substantial Completion shall be submitted to the Owner, the Construction Manager and the Subcontractor for their written acceptance of responsibilities assigned to them in such Certificate of Substantial Completion. The Subcontractor's failure to accept any such responsibilities shall not alter the obligation of the Subcontractor to cause all Work to be completed in accordance with the Contract Documents.

10.4.6 The Owner or its tenants may occupy or use any completed or partially completed portion of the Project Site. Such partial occupancy or use may commence whether or not the portion is Substantially Complete. Immediately prior to such partial occupancy or use, the Owner, the Construction Manager and the Subcontractor shall together inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

10.4.7 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

10.5 Final Completion

10.5.1 As the Work nears completion, the Subcontractor shall:

a. Work with the Contractor, the Owner, the Owner's Representative and the Architect to ensure orderly closeout of all Sub-subcontracts and transition from construction to use and occupancy, including providing a schedule for the closeout of all Sub-subcontractors to the Owner.

b. Assemble and provide all final documentation as required by the Contract Documents and Sub-subcontracts, including Sub-subcontractors' As-built Drawings, Composite As-built Drawings and the other Project Documents, certificates, permits, maintenance and operation manuals, warranties, guarantees, certifications, affidavits, testing reports, maintenance stock, spare parts and keys.

c. Compile a detailed summary of all project expenditures for the Owner's and the Contractor's information and use, and assist in fulfilling all audit and certification requirements.

d. Provide final closeout paperwork on each Sub-subcontractor including preparing, in consultation with the Contractor, the Owner, the Owner's Representative and the Architect, a list of all incomplete documentation required for final payment, and recommend and process final payments.

e. If desired by the Owner, assist the Owner and the Contractor in achieving a phased occupancy of the Project for the Owner.

10.5.2 Final Completion of the Work shall be deemed to have occurred when all of the following shall have been achieved, as memorialized by the issuance of the Certificate of Final Completion: (i) the Subcontractor shall have completed all of the Work in accordance with the Contract Documents; (ii) the satisfactory start-up, testing and operation of all equipment, by means of acceptance tests; (iii) completion or correction, as the case may be, of all Punch List items to the satisfaction of the Contractor, the Architect and the Owner's Representative; (iv) release of all mechanics', materialmen's and similar liens; (v) delivery of all warranties and guarantees, air balance reports, equipment operation and maintenance manuals, Sub-subcontractors' As-Built Drawings and Composite As-built Drawings; (vi) removal of all rubbish, tools, scaffolding and surplus materials and equipment from the Project Site, (vii) delivery of the Subcontractor's Final Affidavit and Release of Claims; and (viii) delivery of the Subcontractor's Final Affidavit and Release of Claims executed by the Subcontractor and all Sub-subcontractors and any person who has filed a lien against the Project Site.

10.5.3 The Subcontractor shall request of the Owner and the Contractor a determination of Final Completion and provide written notice to the Owner and the Contractor that the Work is fully completed and ready for final inspection. Upon receipt by the Owner and the Contractor of such request and notice, the Contractor shall request of the Owner that the Owner will instruct the Architect and/or the Owner's Representative to promptly make such inspection and, when the Architect and/or the Owner's Representative find that all of the events constituting Final Completion shall have been achieved, the Architect and/or the Owner's Representative will promptly notify the Owner and issue the Certificate of Final Completion.

10.6 Assisting Facilities Manager

10.6.1 The Subcontractor shall provide appropriate support and assistance to, and cooperate and coordinate with, the facilities manager for initial operating services at the Project.

10.7 No Damages for Delay; Extensions of Time: Subcontractor agrees to make no claim for damages for delay in the performance of this Agreement occasions by any act or omission by CUCF, Contractor or any of their respective representatives, and agrees that any such claim shall be fully compensated by an extension of time to complete performance of the Work, as provided herein. If the performance of the Work, either by Subcontractor, or by any sub-subcontractor of whatever tier hereunder, is delayed for a reason referred to by subparagraph 10.7.1 herein, the Subcontractor may be allowed a reasonable extension of time. An extension of time for further subcontracted work may be granted only by the Director, upon written application by the Construction Manager. The parties agree that, with respect to this Agreement, the Subcontractor may encounter delays attributable to CUCF and/or Contractor from time to time, including, without limitation, those which are unexpected and unforeseeable, in the progress of the Work, for which delays the Subcontractor agrees that it shall be fully and wholly compensated for each such delay solely and exclusively by an extension of time to complete performance of the Work, and agrees to make no other claim for damages for such delay. The Subcontractor hereby expressly waives and relinquishes all other damages for delay.

10.7.1 Grounds for Extension: If such written application is made to the Director, the Subcontractor shall be entitled to an extension of time for delay in achieving a Milestone Event or for completion of Work, which the Subcontractor conclusively proves to the Director is caused solely: (1) by the acts or omissions of CUCF, its officers, agents or employees; or (2) by the act or omissions of other contractors; or (3) by unavoidable delay, as defined in Article 1.35 of the Prime Agreement, or other supervening conditions entirely beyond the control of either party hereto. The Construction Manager shall, however, be entitled to an extension of time for such causes only for the number of days of delay which the Director may determine to be due solely to such causes, and then only if Subcontractor shall have strictly complied with all of the applicable requirements of Articles 8, 16 and 17 of the Prime Agreement.

10.7.2 Extension for Concurrent Causes of Delay: Subcontractor shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the Work as determined by the Director, irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of Subcontractor or of its sub-subcontractors or materialmen, of whatever tier, and would of itself (irrespective of the concurrent causes) have delayed the Work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission. The determination made by the Director shall be binding and conclusive on Subcontractor. The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the Director.

Permitting Subcontractor to continue with the Work, or any portion thereof, after the applicable Milestone Date or other time fixed for its completion has expired, or after the time to which such completion may have been extended has expired, or the making of any payment to Subcontractor after such time, shall in no way operated as a waiver on the part of CUCF or of Contractor of any of its rights under the Prime Agreement or this Agreement.

10.7.3 Application for Extension of Time: Before Subcontractor's request for a time extension may be approved, Subcontractor must within three (3) business days, time being of the essence with respect thereto, after commencement of the condition which allegedly has caused or is causing the delay, submit a written application to the Director, with a copy to the Construction Manager, identifying:

- (a) the Construction Manager, the Subcontractor, the Agreement registration number; and Project description;
- (b) liquidated damage assessment rate, as specified in this Agreement;
- (c) original subcontract bid amount;
- (d) the original subcontract start date and completion date;
- (e) any previous time extensions granted (number and duration); and
- (f) the extension of time requested.

Subcontractor shall thereafter submit updates of such particulars to Contractor from time to time not more than thirty (30) days after any such further costs or losses of time are claimed to have been incurred.

In addition, the application for extension of time shall set forth in detail:

- (a) the nature of each alleged cause of delay in completing the Work or portion thereof;
- (b) the date upon which each such cause of delay began and ended and the number of days attributable to each such cause;
- (c) a statement that Subcontractor waives all claims except those delineated in the application and the particulars of any claims which Subcontractor does not agree to waive. For time extensions for final completion payments, the application shall include a detailed statement of the dollar amounts of each element of claim item reserved; and
- (d) a statement indicating Subcontractor's understanding that the time extension is granted only for the purpose of permitting continuation of performance and payment for work performed and that the Construction Manager and CUCF each retains its right to conduct an investigation and assess liquidated damages as appropriate.

10.7.4 Determination of Time Extensions: Time extensions for the Work, or any portion thereof, shall be determined in writing by the Director. The determination of the Director shall be final and binding as to the allowance of an extension and the number of days allowed.

10.7.5 Assessment of Liquidated Damages: In the case of final completion payments, liquidated damages shall be assessed as determined by the delay analysis prepared by the CUNY construction management staff pursuant to Section 10.5 of the Prime Agreement. However, neither the failure to assess liquidated damages at the time, nor the report itself, nor the granting of a time extension at final completion shall operate as a waiver or release of any claim against the Subcontractor for either actual or liquidated damages.

10.8 Liquidated Damages

10.8.1 Contractor and the Subcontractor recognize that the consequential damages to the Owner and/or the Contractor which would result from the Subcontractor's failure to achieve completion of any of the applicable Milestone Events would be substantial but are uncertain and cannot be calculated exactly and have agreed that if the Subcontractor shall have failed to achieve any Milestone Event, the Subcontractor shall pay to the Contractor, as liquidated damages and not as a penalty, with respect to each Milestone Event, the applicable Liquidated Damages. The Contractor shall have the right to withhold from any sums due to the Subcontractor under this Agreement the amount of Liquidated Damages then due to the Owner, and apply the same towards payment of such Liquidated Damages. If Subcontractor shall fail to pay any Liquidated Damages as and when due, Subcontractor hereby gives CUCF a direct right of action against Subcontractor to enforce and collect such Liquidated Damages. It is agreed, however, that the existence of such right shall not impose an obligation upon CUCF to exercise such right.

10.8.2 The parties further acknowledge that the amount of Liquidated Damages provided for in Section 10.8.1 hereof represents fair and reasonable consideration under the circumstances existing as of the date of this Agreement and that such sum represents the parties' best estimate as of the date hereof of the Contractor's and/or Owner's damages for delay in the event of the Subcontractor's failure to achieve any Milestone Event.

10.8.3 The parties acknowledge and agree that the Liquidated Damages provided for in Section 10.8.1 relate only to damages to the Contractor caused by a delay in achieving any Milestone Event, and such Liquidated Damages are not intended to, and shall not, limit the Contractor's recovery from the Subcontractor under the terms of this Agreement for any direct damages caused by or resulting from the performance of the Work by the Subcontractor or any Sub-subcontractors.

10.8.4 If Contractor determines, in its sole good faith judgment based upon a review of the then current Project Schedule and the most recent reports issued pursuant to Article 5 of this Agreement, that the Subcontractor will not achieve any of the Milestone Events, the Contractor may withhold from any payments due to the Subcontractor under this Agreement an amount equal to the aggregate Liquidated Damages that Contractor anticipates will become due under Section 10.8.1 hereof, by reason of the projected late achievement of such Milestone Event. Once such Milestone Event shall have been achieved, the

Contractor shall reconcile the actual amount of Liquidated Damages due, if any, with the amount withheld by the Contractor on account of the foregoing anticipated Liquidated Damages, and the difference, if any, shall be accounted for in the next payment due to the Subcontractor hereunder.

ARTICLE 11 - WARRANTY; GUARANTY; BONDS

11.1 Warranty

11.1.1 The Subcontractor warrants that:

a. the Work shall be performed in a good and workmanlike manner, in conformity with the Contract Documents and consistent with the highest standards and practices of the construction industry in the area of the Project Site for "Class A" properties similar to the Project, and shall be of first-class quality and workmanship, free of any faults or defects in equipment, material, or design furnished, or workmanship performed by the Subcontractor, or any Sub-subcontractor, supplier or manufacturer retained by the Subcontractor for purposes of performing the Work; and

b. The materials and equipment provided in support of the Work performed are new unless otherwise specified in the Contract Documents.

11.1.2 The warranties described in this Section 11.1 shall not be construed to modify or limit, in any way, any rights or actions which Owner and/or the Contractor may otherwise have against Subcontractor, at law or in equity.

11.2 Guaranty

11.2.1 If, within the Guaranty Period, any of the Work is found to be damaged, defective or at variance with the Contract Documents, the Subcontractor shall repair or replace such Work at its sole cost and expense. The Subcontractor shall make or commence to make, within two (2) days of its receipt of notice from the Owner and/or Contractor during the Guaranty Period, any and all repairs or replacements of such Work, and shall repair and replace, at its sole cost and expense, any and all damage caused by such repair or replacements, to the satisfaction of the Owner and the Contractor. If the Owner and/or the Contractor determines that an emergency exists which requires more immediate action than the Subcontractor is able to provide, the Owner and/or the Contractor may, without sending any notice to the Subcontractor, perform or cause to be performed such repairs or replacements, in which event the Subcontractor shall compensate the Owner and the Contractor for the cost thereof, on demand. Any repairs or replacements that the Subcontractor is required to make pursuant to this Section 11.2.1 shall be prosecuted to completion by the Subcontractor even if such repairs or replacements may not be completed until after the expiration of the Guaranty Period. The Guaranty Period shall be deemed extended for any repair or replacement to the date which is one (1) year from the final acceptance of such repair or replacement. The obligations of the Subcontractor to make repairs or replacements under this Section 11.2.1 shall not be satisfied, unless the Owner and the Contractor so elect in writing, by the payment of money to the Owner and/or the Contractor. If the Owner and/or the Contractor determine, in their sole and absolute discretion, that any materials or equipment installed as part of the Work are inherently defective, thus being incapable of repair, then the Subcontractor shall, upon notification by the Owner and/or the Contractor of such determination, provide a replacement for such materials or equipment. The Owner and/or the Contractor may, if either so elects, specify the manufacturer and the trade name or model number of the replacement for such materials or equipment. In the event that the Subcontractor fails to comply with any of the provisions of this Section 11.2.1, the Owner and/or the Contractor may, in addition to exercising all other legal and equitable remedies they each may have, (1) deduct from any payment due or thereafter to become due to the Subcontractor under this Agreement, the amount of damage, cost or expense that has been or, as reasonably estimated by the Owner and/or the Contractor, may be incurred by the Owner and/or the Contractor due to such failure by the Subcontractor, and (2) perform or cause to be performed any needed repairs and replacements, in which event the Subcontractor shall compensate the Owner and/or the Contractor for the cost thereof, on demand. The Subcontractor hereby expressly waives all claims that its guaranty or any of its warranties were impaired due to any corrective work performed by, or at the direction

of, the Owner and/or Subcontractor. This Section 11.2.1 shall survive Final Completion of the Project or the expiration or earlier termination of this Agreement.

11.3 Sub-subcontractors' Guarantees and Warranties

11.3.1 The Subcontractor shall provide and shall obtain from the sub-subcontractors (excluding those sub-subcontractors which have only supplied materials and equipment and not installed the same) and deliver to the Owner and the Contractor four copies of notarized warranties in the form annexed hereto as Exhibit R for the Work performed under each section of the Specifications. The Subcontractor shall submit all of the warranties to the Contractor, the Owner and the Architect as a prerequisite to Final Payment.

11.3.2 In addition to procuring the warranties required pursuant to Section 11.3.1 hereof, the Subcontractor shall acknowledge and agree to Section 11.3.1 hereof and shall arrange for the inclusion of the following provision in every Sub-subcontract, agreement and purchase order relating to the purchase by the Subcontractor or Sub-subcontractors of Merchandise to be installed or incorporated by the Subcontractor or the Sub-subcontractors as part of the Work:

"The supplier expressly agrees that The City University Construction Fund ("Owner") shall be a third-party beneficiary of all of the obligations of the supplier hereunder, including without limitation, the beneficiary of all warranties, expressed or implied, and guarantees which the supplier makes herein relating to labor, materials, equipment, goods, merchandise or products (collectively, "Merchandise") to be sold hereunder by the supplier. Nothing herein shall be construed to make this an agreement between the Owner and/or F.J. Sciamme Construction Co., Inc. and the supplier except to the extent provided in the immediately preceding sentence and the supplier acknowledges that it has no contractual rights, expressed or implied, which it can assert against the Owner and/or F.J. Sciamme Construction Co., Inc. Without limiting in any manner any obligations of the supplier with respect to the quality of the Merchandise or any other warranty or guaranty provided by the supplier, the supplier expressly warrants and agrees that the Merchandise to be furnished hereunder shall be merchantable and shall be fit for the purpose for which such Merchandise is purchased."

11.3.3 At the Owner's and/or Contractor's election, the Subcontractor shall either enforce, on the Owner's behalf, the guarantees and warranties described in Sections 11.1 and 11.2 hereof, or assist the Owner and/or the Contractor in the enforcement thereof.

11.4 Owner's Rights

11.4.1 The warranties and guaranties provided for in this Article 11 and elsewhere in the Contract Documents shall be for the benefit of, and enforceable by, the Owner and/or the Contractor on behalf of the Owner at the request of the Owner, and shall be in addition to and not a limitation of any rights the Owner and/or the Contractor may have under the terms of the Contract Documents, or which may otherwise be available at law or in equity.

11.5 Subguard

11.5.1 Subcontractor acknowledges that Contractor intends to obtain subcontractor default insurance, also known as "Subguard" insurance, relative to the Work, of the Project. This Agreement shall be subject to and enrolled in the Contractor's Subguard insurance program, and Subcontractor shall timely and completely furnish all information required under said progress and shall otherwise cooperate fully with Contractor to enable all terms and conditions of such enrollment to be met and to enable any claim which may be made under said progress by reason of the Work to be fully and accurately administered.

11.6 Payment Guarantee

11.6.1 In the event the terms of this Agreement do not require the Construction Manager or Subcontractor to provide a payment bond, CUCF shall, in accordance with the terms of this Article 11.6, guarantee payment of all lawful demands for: (a) wages and compensation for labor performed and/or services rendered; and (b) materials, equipment, and supplies provided, whether incorporated into the Work or not, when demands have been filed with CUCF as provided herein by any person, firm or corporation which furnished labor, material, equipment, supplies or any combination thereof, in connection with the Work performed hereunder (hereinafter referred to as the "beneficiary") at the direction of CUCF, the Construction Manager or its subcontractor(s). For the purpose of this Article 11.6, "subcontractor" shall mean any person, firm, or corporation, other than employees of the Construction Manager, who or which contracts with the Construction Manager to furnish, or actually furnishes, labor, or labor and materials, or labor and equipment, at the site or in the performance of any of the Work hereunder.

11.6.2 The provisions of Article 11.6.1 above are subject to the following limitations and conditions:

- (a) The guarantee is made for the benefit of all beneficiaries as defined in Article 11.6.1, above, provided that those beneficiaries strictly adhere to the terms and conditions of this Article 11.6.2;
- (b) Nothing in this Article 11.6 shall prevent a beneficiary providing labor, services or material for the work from suing the Construction Manager or its Subcontractor(s) for any amounts due and owing the beneficiary by the Construction Manager or its Subcontractor(s).
- (c) All demands made against CUCF pursuant to this Article 11.6 shall be made within four (4) months from the date payment is due on the invoice or invoices submitted by the beneficiary to the Construction Manager or its Subcontractor(s) for labor or work done or for materials or supplies delivered or, if the demand is for wages, four (4) months from the date the wages were due to be paid to the beneficiary.
- (d) All demands made against CUCF by such beneficiary shall be presented to the Director's Representative along with all written documentation concerning the demand which the Director's Representative deems appropriate or necessary, which may include, but shall not be limited to: the subcontract or sub-subcontract; any invoices presented to the Construction Manager or Subcontractor for payment; the notarized statement of the beneficiary that the demand is due and payable, that a request for payment has been made of the Construction Manager or Subcontractor and that the demand has not been paid by the Construction Manager or Subcontractor within the time allowed for such payment by the subcontract or sub-subcontract, and copies of any correspondence between the beneficiary and the Construction Manager or Subcontractor concerning such demand. CUCF shall notify the Construction Manager or Subcontractor that a demand has been made. The Construction Manager or Subcontractor shall inform CUCF of any defenses to the demand, and shall forward to CUCF any documents CUCF requests concerning the demand.
- (e) CUCF shall make payment only if, after considering all defenses presented by the Construction Manager or Subcontractor, it determines that the payment is due and owing to the beneficiary making the demand.
- (f) CUCF will not initiate the payment process of this Article 11.6 or make payment on a demand where the beneficiary making the demand has filed a lien against the Work or otherwise sues CUCF prior to receiving a written notice from CUCF that it will not pay the demand.
- (g) No beneficiary shall be entitled to interest from CUCF, or to any other costs, including but not limited to attorney's fees.

11.6.3 In the event CUCF determines that the demand is valid, CUCF shall notify the Construction Manager of such determination and the amount thereof, and direct the Construction Manager to pay immediately such amount to the beneficiary. In the event the Construction Manager, within seven (7) days of receipt of such notification from CUCF, fails to pay the beneficiary, such failure shall constitute automatic and

irrevocable assignment of payment by the Construction Manager to the beneficiary for the amount of the demand determined by CUCF to be valid. The Construction Manager, without further notification or other process, hereby gives its unconditional consent to such assignment of payment to the beneficiary and authorizes CUCF, on its behalf, to take all necessary actions to implement such assignment of payment, including without limitation the execution of any instrument or documentation necessary to effect such assignment.

11.6.4 The provisions of this Article shall not prevent the parties from resolving disputes in accordance with the provisions of Article 29 of the Prime Agreement and Article 16 of this Agreement.

11.6.5 Nothing in this Article shall relieve Subcontractor of the obligation to pay the claims of all persons with valid and lawful claims against Subcontractor relating to the Work.

11.6.6 The payment guarantee made pursuant to this Article 11.6 shall be construed in a manner consistent with Section 137 of the State Finance Law and shall afford to persons furnishing labor or materials to the Construction Manager or its Subcontractors in the prosecution of the Work under this Agreement all of the rights and remedies afforded to such persons by such section, including but not limited to, the right to commence an action against CUCF on the payment guarantee provided by this Article within the one year limitations period set forth in Section 137.

11.7 Bonds: Subcontractor shall, prior to performing any Work, provide performance and payment bonds, each of which shall be in an amount equal to 100% of the subcontract price and shall name the Construction Manager as obligee thereunder. Such bonds shall be provided by a surety company licensed and authorized to do business in the State of New York and shall be identical in all respects to the form of bonds attached to the Prime Agreement as Exhibit E, with no variations, additions, or deletions to such form of bonds. Premiums for any required bonds are included in the Subcontract Price hereunder. Subcontractor shall submit two (2) originals of such bonds, one of which shall be submitted by the Construction Manager to CUCF. No change, alteration or modification in or deviations from this Subcontract or the plans or specifications or in the terms or manner of payment, whether made in the manner herein provided or not, shall release or exonerate, in whole or in part any surety on any bond given in connection with this Subcontract, and neither Owner nor Contractor shall be under any obligation to notify the surety or sureties of any such change. If at any time prior to final payment, the Owner reduces the amount of retainage held from Contractor, Contractor may, in its sole discretion, without the consent of Subcontractor's surety, reduce accordingly the retained percentage withheld from Subcontractor.

11.8 Survival

11.8.1 The provisions of this Article 11 shall survive the Final Completion of the Project or the expiration or earlier termination of this Agreement.

ARTICLE 12 - INSURANCE

12.1 Insurance

12.1.1 The Subcontractor shall obtain and maintain the insurance coverages specified in Exhibit G hereto unless otherwise agreed to in writing by the Contractor and the Owner.

ARTICLE 13 - INDEMNITY

13.1 Indemnity

13.1.1 For and in consideration of the mutual promises and covenants contained herein, Subcontractor shall, to the fullest extent permitted by law, indemnify the Construction Manager to the same degree that the Construction Manager is obligated to indemnify any other party (including but not limited to, CUCF) under the Prime Agreement.

13.1.2 Without limiting the foregoing, Subcontractor shall, to the fullest extent permitted by Applicable Laws, (a) indemnify and hold harmless each of the Indemnitees, from and against any and all Losses that may be incurred by any of the Indemnitees as a result of, in connection with, or allegedly arising from or as a consequence of (i) the performance, non-performance or any breach of this Agreement by the Subcontractor, (ii) any breach of a sub-subcontract by a sub-subcontractor, (iii) the infringement of any copyright, patent or trademark arising out of the performance of any Work, (iv) a violation by the Subcontractor or any sub-subcontractor of any Applicable Laws or any Permits, or (v) any negligent acts or omissions or willful conduct of the Subcontractor or any sub-subcontractor or any of their respective employees, agents or representatives in connection with Work, and (b) defend each of the Indemnitees against any Recovery Action. Insofar as the facts and Law relating to any claim would preclude any of the Indemnitees from being completely indemnified by Subcontractor, such of the Indemnitees shall be partially indemnified by Subcontractor to the fullest extent provided by Applicable Laws.

13.1.3 Notwithstanding anything to the contrary in Section 13.1.1 hereof, any of the Indemnitees may elect, at any time and in its sole and absolute discretion, to defend itself against any Recovery Action, with counsel of its choice. If an Indemnitee does not exercise such election, (a) any counsel proposed to be retained by the Subcontractor to defend such Indemnitee shall not be so retained without the prior written approval of such Indemnitee, (b) the Subcontractor shall, and shall instruct the counsel that it retains to, keep such Indemnitee apprised in writing, on a regular basis, of the status of the Recovery Action, (c) in the event of any disagreement between the Subcontractor and said Indemnitee regarding the strategy to employ in connection with said Recovery Action, the Indemnitee's strategy shall prevail and be followed by the Subcontractor and its counsel, and (d) the Recovery Action shall not be settled without said Indemnitee's prior written approval of the settlement.

13.1.4 The foregoing indemnity shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the benefit of the Subcontractor under any applicable workers compensation, disability benefits or other similar employee benefit acts.

13.1.5 In the event the Construction Manager or any of the other Indemnitees incur any Losses or any Recovery Action is asserted or instituted against the Construction Manager or any of the other Indemnitees, the Construction Manager shall be entitled to withhold from any payments then due or thereafter becoming due to the Subcontractor under this Agreement such amount as may be deemed sufficient, in the reasonable judgment of the Construction Manager, to protect it and the other Indemnitees against any Losses that they may incur, and the Construction Manager shall also be entitled to apply any such withheld amount to compensate itself and the other Indemnitees for any Losses that they actually incur.

13.1.6 The Subcontractor shall include in each sub-subcontract an indemnity provision substantially similar to the provisions in this Section 13.1, which shall also expressly provide that the sub-subcontractor thereunder shall defend, indemnify and hold harmless the Indemnitees, in addition to the Subcontractor, and that the Indemnitees are third party beneficiaries of said provision.

13.1.7 The provisions of this Section 13.1 shall survive Final Completion of the Work or the expiration or earlier termination of this Agreement.

ARTICLE 14 - PAYMENTS TO SUBCONTRACTOR

14.1 Subcontract Sum

14.1.1 In consideration of the Subcontractor's performance of all of the Work and its other obligations under this Agreement, the Contractor shall pay to the Subcontractor the Subcontract Sum, subject to adjustment as provided in Article 6.

14.1.2 The Subcontract Sum shall be paid to the Subcontractor monthly, in proportion to the Work performed in the immediately preceding month, subject to retention of ten percent (10%). At the Contractor's sole and absolute discretion, such retention may, but shall not be required to, be reduced to five

percent (5%) after such time that the Work is fifty percent (50%) complete, as determined by the Contractor. The retained portion of the Subcontract Sum shall be released to the Subcontractor as part of the Final Payment.

14.1.3 Notwithstanding anything to the contrary in the Contract Documents, and with respect to any Change Order, in no event shall the Subcontractor receive any profit attributable to the Subcontractor's or any Subcontractor's overtime or "premium" time, it being the intent of the parties that the Subcontractor will receive profit only on the "straight" time, or non-overtime, portion of such Change Order.

14.2 Discounts, Rebates and Credits

14.2.1 The Subcontract Sum shall be credited with all rebates, trade discounts, credits on taxes or credits realized on cash deposits or insurance premiums. The Subcontractor shall take such steps as are reasonably necessary and appropriate to obtain such discounts, rebates and credits; provided, however, the Subcontractor shall not be required to utilize its own funds to secure such discounts, rebates and credits. Any tools, supplies or equipment left at the Project Site at the completion of the Work shall be transferred to the Contractor in good condition, subject to ordinary wear and tear. The Subcontractor shall provide a list of all such equipment to the Contractor.

ARTICLE 15 - SUBCONTRACT SUM

15.1 Subcontractor understands, acknowledges and agrees that the underlying Project is subject to public financing, which is not guaranteed and may not occur. Accordingly, and to the fullest extent permitted by law and in accordance and to the same extent as the Prime Agreement, Subcontractor agrees that this Agreement shall be deemed executory only to the extent of the moneys appropriated by the applicable governmental entities and available for the purpose of the Prime Agreement and this Agreement and that no liability or account thereof shall be incurred by any party beyond the amount of such moneys. Subcontractor further acknowledges and agrees that no amounts shall be paid on account of this Agreement unless the Director has given prior written approval to the amount of award of this Agreement and the amount of any change orders thereto, as required by Article 10 of the Prime Agreement.

15.2 Schedule of Values: Upon commencement of construction, and prior to any progress payment being made by the Construction Manager on account of the Work, Subcontractor shall submit to the Construction Manager a schedule of Values, which shall be prepared on a form provided by the Construction Manager, of construction costs for the Work of this Agreement, and any other information that may be required by the Construction Manager and the Director. The breakdown must be approved in writing by the Construction Manager and the Director's Representative, and may be amended, modified, revised or supplemented, from time to time, in accordance with the terms of this Agreement. The Schedule of Values shall: (i) be prepared in a form with such detail and supported by such data to substantiate its accuracy as the Construction Manager may require; (ii) be broken down into cost categories indicating material in fabrication, material fabricated and stored off-site (if permitted by the Owner and the Construction Manager), material delivered and stored on-site, and material in-place; (iii) include reserves for testing, start-up, commissioning, Punch List work and final record documentation of the Work; and, (iv) provide other detail to permit the Construction Manager to verify the Work Cost and its percentage completion on a monthly basis. No partial payment will be made until the bid breakdown is approved. The breakdown set forth in the Schedule of Values shall be used for checking Subcontractor's requests for partial payment for Work performed and the other purposes provided for in Section 15.15, and shall not be binding on the Construction Manager or the Director for any purpose whatsoever. The Schedule of Values shall not be amended, modified, revised or supplemented by the Subcontractor except as necessary to take into account adjustments to the Work Cost or as otherwise required pursuant to Section 15.15.

15.3 Cost Records

15.3.1 The Subcontractor shall keep detailed accounts and cost records, in addition to those specified elsewhere in this Agreement, as are normally maintained by experienced and prudent trade

contractors for work similar in nature and scope to the Work, including, without limitation, cost records required in connection with time and material and/or unit price Change Orders.

15.4 Taxes Included in Subcontract Sum

15.4.1 The Subcontract Sum shall include all taxes which are legally enacted at the time that this Agreement is executed.

15.5 No Escalation

15.5.1 The Subcontractor understands and agrees that escalation in the costs of labor and/or materials, regardless of the cause for such escalation, including the Contractor's delay, and the time of such escalation, shall not constitute a Change or entitle the Subcontractor to a Change Order or additional payment of any nature.

15.6 Cost Overruns

15.6.1 If the aggregate of the actual Cost of the Work and the Base Fee exceeds the Subcontract Sum, as adjusted pursuant to the terms of this Agreement, the Subcontractor shall pay and bear the entire amount of such excess.

15.7 Shortfall

15.7.1 Each Application for Payment submitted by the Subcontractor shall constitute a representation that to the best knowledge of the Subcontractor the undisbursed remainder of the Subcontract Sum will be sufficient to fund the performance and completion of the Work. If at any time the Contractor, in good faith, determines that the undisbursed remainder of the Subcontract Sum will not be sufficient to complete the Work, then no additional payments shall be made to the Subcontractor hereunder unless and until the Subcontractor, at its sole cost and expense, performs a sufficient portion of the Work so that the portion of the Subcontract Sum then remaining unpaid, as reasonably determined by the Contractor, shall be sufficient to complete the Work.

15.8 Progress Payments

15.8.1 Based upon each Application for Payment and accompanying documents submitted by the Subcontractor in accordance with this Agreement, and the Certificates for Payment, the Construction Manager shall make progress payments to the Subcontractor in accordance with the terms of this Section 15.15. Each Application for Payment shall include a verified statement in the prescribed form setting forth the information required under Section 220(a) of the Labor Law and an executed original Subcontractor's Waiver and Release of Lien.

15.8.2 Subject to the other provisions of this Agreement, the amount of each monthly progress payment shall be computed as follows:

a. calculate the product of (i) the Subcontract Sum, times (ii) the Percentage of Completion of all construction Work required under Agreement, as determined by the Construction Manager and the Director, based on the Schedule of Values;

b. subject to fulfillment of all of the terms and conditions set forth in Exhibit D of the Prime Agreement and Section 15.16.3 of this Agreement with respect to stored equipment and fabricated materials, subject to approval by the Director, add eighty-five (85%) percent of the portion of the Subcontract Sum incurred to date which is allocable to such equipment and fabricated materials stored in accordance with Exhibit D of the Prime Agreement and Section 15.16.3 of this Agreement;

c. subtract the amount retained from previous progress payments under this Section 15.15.2 that has not yet been paid to the Subcontractor;

d. subtract amounts already paid to the Subcontractor in respect of the Subcontract Sum (including any retainage paid);

e. subtract retainage on the subject progress payment pursuant to Section 15.15.3 hereof; and

f. subtract amounts withheld under Section 15.18 hereof.

15.8.3 Until Substantial Completion of the Work, the Construction Manager shall deduct and retain 5% of the value of the construction Work certified for payment in each partial payment voucher. Upon determination by the Director that the Work required is substantially complete, the retainage shall be reduced to 1% of the value of the construction Work certified for payment in each partial payment voucher, which amount shall be retained by the Construction Manager in accordance with Article 25 of the Prime Agreement.

15.8.4 Provided that the completed Application for Payment was timely submitted, each progress payment shall be made to the Subcontractor within forty-five (45) days, provided that Construction Manager has received the corresponding payment from Owner. The Construction Manager reserves the right, in its sole and absolute discretion, to issue any portion of a progress payment as a joint or two-party check payable to the Subcontractor and any sub-subcontractor or other party payable pursuant to the applicable Application for Payment.

15.8.5 The Subcontractor shall use the sums paid to it as progress payments solely for the purpose of the performance of, and payment for, the Work. The Subcontractor shall hold all monies received in trust for such purpose in accordance with Applicable Laws.

15.8.6 Promptly upon request from the Construction Manager, the Subcontractor shall furnish to the Construction Manager satisfactory proof as to the disposition of any monies paid to the Subcontractor hereunder; provided, however, no provisions hereof shall be construed to require the Construction Manager to see to the proper disposition or application of such monies.

15.8.7 The Subcontractor shall promptly pay all costs incurred in performance of the Work, and, at the request of the Construction Manager, shall deliver to the Construction Manager copies of all invoices, receipts, affidavits and other evidence of payment. The Subcontractor shall furnish to the Construction Manager appropriate releases and satisfactions from all sub-subcontractors, suppliers and other parties furnishing labor or materials in the performance of the Work. The Subcontractor shall maintain its accounts separately with each sub-subcontractor and will provide, upon the Construction Manager's written request, a certified statement as to the payments received and payments made to any particular sub-subcontractor. The Construction Manager shall have the right to contact sub-subcontractors directly to ascertain (i) what amounts, if any, are due to them from the Subcontractor, (ii) the projected costs of completing their remaining portion of the Work, and (iii) the scope, amount and substance of any claims or disputes between them and the Subcontractor. To the extent any funds to be disbursed by the Construction Manager to the Subcontractor under this Agreement include sums payable by the Subcontractor to any sub-subcontractor, the Construction Manager may, at its election, disburse such sums to the Subcontractor by means of a check payable jointly to the Subcontractor and the applicable sub-subcontractor. Upon the Contractor's receipt of evidence, or in the event that Contractor shall otherwise determine, that the Subcontractor shall be delinquent or shall have defaulted with respect to its obligations to make payments to any of its sub-subcontractors, or otherwise of any monies due and owing for labor, materials, supplies or equipment related to or incorporated in the Project, and if Contractor determines, in its sole but reasonable judgment, that it would be beneficial to, and in the interests of, the prosecution of the work of the Prime Agreement under the Contract Documents, the Contractor reserves the right, upon forty-eight (48) hours' prior written notice to the Subcontractor ("Notice of Intention"), to retain any monies then due or thereafter becoming due to the Subcontractor under this Agreement and pay the same directly for labor, materials, equipment, tools, plant,

facilities, services and all other obligations of the Subcontractor arising out of the Work. Any such payments may be by joint check, payable to Subcontractor and the person or entity to which the money is determined to be owed; provided, however, that if within forty-eight (48) hours after issuance of such Notice of Intention, Subcontractor submits evidence sufficient in Contractor's sole judgment that there is a good faith dispute concerning said alleged delinquency and provides adequate assurances that the progress of the Work and the costs or time of performance of the work of the Prime Contract will not be adversely affected, Contractor will not exercise its rights as aforesaid.

15.9 Application for Payment

15.9.1 Requisitions for payment may be submitted as the work progresses, but not more often than once a month. Unless otherwise required by the Prime Agreement, Subcontractor is required to submit its application for payment monthly, by the 25th day of each calendar month, for the work performed during that month. Requisitions shall be in the authorized form and shall set forth the services performed by Subcontractor and the total amount of partial payment requested. Pursuant to a schedule to be established by the Contractor, the Subcontractor shall submit to the Contractor a preliminary Application for Payment for Work completed and projected to be completed each month, in accordance with the Schedule of Values, in a form acceptable to the Contractor. The Subcontractor shall receive, review, and recommend for payment, in whole or in part, all Sub-subcontractors' pay requests and assemble all costs on a monthly basis into a single Application for Payment. The Subcontractor shall meet with Contractor within five (5) days after the delivery of such preliminary Application for Payment to review same. Subcontractor shall submit one original and two copies of each requisition for payment based on the aforesaid preliminary copy and incorporating any changes thereto agreed upon after such review meeting, which requisition shall consist of not less than that required under this Agreement in a form of requisition acceptable to the Director and verified by Subcontractor, with an affidavit and waiver of lien by each sub-subcontractor and supplier to be paid pursuant to the requisition and by Subcontractor, with verified payroll reports from each sub-subcontractor and from Subcontractor, and with those regulatory documents pertinent to the Work for the period, such as waste manifests. The total amount of partial payment requested shall be broken down into the following categories, to the extent the category applies to the payment period: (1) Construction Work and (2) Additional Services. Requisitions for payment shall be accompanied by the documentation set forth below.

- (a) Project Progress Report: Subcontractor shall submit a current report indicating (1) the percentage of completion of all required Work of the Subcontractor, and (2) the services Subcontractor was directed to provide during the payment period. If requested, Subcontractor shall furnish a forecast of the amount of the next month's expected application for payment.
- (b) Construction Work: For any period for which Subcontractor is requesting payment for construction work, Subcontractor shall submit the documentation set forth below and any additional documentation required by the Director:
 - (1) Current report indicating: (1) the name and type of construction Work performed by Subcontractor, and (2) the percentage of completion of all required construction Work under that subcontract.
 - (2) Certified copies of payroll reports for Subcontractors and all sub-subcontractors of whatever tier which have performed construction Work for the Project pursuant to this Agreement.
- (c) Each Application for Payment shall contain a separate category for cost of materials stored off-site (subject to fulfillment of all of the terms and conditions set forth in Section 15.16.3 hereof) and applicable retainage
- (d) Miscellaneous Expenses: For any period for which Subcontractor is requesting reimbursement for expenses incurred for miscellaneous items for which reimbursement is

permitted under this Agreement, Subcontractor shall submit: (1) a report describing the miscellaneous items Subcontractor was directed to provide, and (2) receipted bills or any other data required by the Construction Manager and/or the Director.

- (e) Extra Work: For any period for which Subcontractor is requesting reimbursement for expenses incurred for Extra Work, Subcontractor shall submit: (1) a report describing the Extra Work Subcontractor was directed to provide, and (2) receipted bills or any other data required by the Construction Manager and/or the Director.
- (f) Particular attention shall be paid by Subcontractor to timely submission of EEO, MBE, DBE, WBE and similar requirements of the Contract Documents required by the Owner. Delay in submitting any of these documents may cause delay in payment.

15.9.2 Each Application for Payment shall be accompanied by (a) cost data to support the application (including AIA forms G702 and G703 or such other form acceptable to the Director, accurately reflecting current percentage of completion on a line-item basis, verified invoices and labor sheets); (b) the Subcontractor's certification in a form acceptable to the Contractor, executed by the Subcontractor; (c) a Subcontractor's Waiver and Release of Lien executed by Subcontractor, all sub-subcontractors and suppliers and any person who has filed a preliminary notice on the Project or with respect to all Work for which payment is requested; (d) Subcontractor's Waiver and Release of Liens, executed by, respectively, the Subcontractor, and all sub-subcontractors and suppliers, with respect to all Work for which payment was made at least twenty (20) days prior to the submission of the Application for Payment; (e) an updated list of Sub-subcontractors and suppliers and a disbursement record, in a form acceptable to the Contractor, reflecting each disbursement made to date to all Sub-sub contractors and suppliers; and (f) any other documents or materials required by other provisions of this Agreement to be delivered with an Application for Payment. If required by Contractor, pay quantities and daily reports shall be turned in daily to Contractor's project representative. Failure to do so may delay payment.

15.9.3 In the event of any disputes between Subcontractor and its laborers, sub-subcontractors, suppliers or others, Subcontractor may except same from its requisition for payment, but shall furnish complete details as to the nature of such disputes, showing that Contractor is fully indemnified from any loss emanating from such dispute. Should Subcontractor fail to furnish such affidavit, no payments shall be made or be deemed to be due to Subcontractor.

15.9.4 Unless otherwise agreed in writing, and notwithstanding anything to the contrary contained in this Agreement, the Contractor will make payment only on account of equipment and materials purchased by the Subcontractor for installation and incorporation into the Work when such equipment and materials have been installed; provided, however, when such materials and equipment are needed to maintain the sequence of the Work and have been delivered to and safely stored and protected at the Project Site, or at an off-site location approved in advance and in writing by the Contractor, the Contractor will make payment on account of such materials and equipment if the following conditions shall have been satisfied: (i) the Contractor shall have verified the storage of the same; (ii) if the materials are stored off-site, then the Contractor will only make payment on account of fabricated materials (i.e., not raw materials); (iii) compliance by the Subcontractor with procedures satisfactory to the Contractor to establish the Contractor's title to such stored equipment and materials or otherwise protect the Contractor's interest, which procedures shall include, for any such equipment and fabricated materials stored off the Project Site, applicable insurance, storage and transportation to the Project Site; (iv) title to any such equipment and fabricated materials stored off-site passing to the Contractor upon payment therefor; provided, however, that the Subcontractor shall bear the risk of loss of equipment and fabricated materials at all times during transportation to the Project Site and while equipment and fabricated materials are stored, and the Subcontractor shall be responsible for the proper care, storage, receipt, delivery, unloading, storage, preservation, insurance and protection of all equipment and fabricated materials it is to furnish, install, provide or have provided to it under this Agreement; and (v) the equipment and fabricated materials stored off-site shall be appropriately tagged and segregated in order to further protect the Contractor's interest therein prior to delivery thereof to the Project Site. The Subcontractor hereby absolutely and unconditionally guarantees to the Contractor delivery of all equipment and fabricated materials stored off-

site as aforesaid, free and clear of all liens and encumbrances, and the Subcontractor shall indemnify, defend and save the Contractor harmless from and against any and all loss, cost, expense, liability, damage or injury, including legal fees and disbursements, that the Contractor may directly or indirectly sustain, suffer or incur, arising or resulting, directly or indirectly, from such storage of equipment and fabricated materials off-site or from the failure of any Sub-subcontractor or supplier to deliver such stored equipment and fabricated materials to the Contractor as and when called for by the Contractor or the Subcontractor.

15.10 Certificates for Payment

15.10.1 Provided that the Construction Manager shall have received the corresponding certificate from CUCF or the Architect, the Construction Manager will, within twenty-five (25) days after the receipt of Subcontractor's Application for Payment, either (i) approve all or part of the amount requested by the Subcontractor in such Application for Payment, or (ii) notify the Subcontractor in writing of its reasons for withholding approval. If and to the extent that the Construction Manager approves the Application for Payment, the Construction Manager will prepare and will submit to CUCF, in accordance with Article 42 of the Prime Agreement, an application for payment which shall include amounts certified by the Construction Manager for payment to Subcontractor. If the Contractor declines to approve an Application for Payment, in whole or in part, the Contractor shall provide the Subcontractor with a statement describing generally the reasons for Contractor's disapproval; provided, however, the Contractor's failure to provide such statement to the Subcontractor shall not operate to waive the Contractor's right to disapprove such Application for Payment, in whole or in part, or nullify any such disapproval.

15.11 Disapproving the Application for Payment or Otherwise Withholding Payment

15.11.1 If any one or more of the following conditions exist:

- a. defective or non-conforming Work has not been remedied;
- b. the Work has not progressed to the point indicated in an Application for Payment;
- c. third party claims have been filed or reasonable evidence exists indicating likelihood of the filing of such claims;
- d. failure of the Subcontractor to make payments promptly to Sub-subcontractors or suppliers for Work performed or labor or materials furnished for the Subcontractor, provided the Contractor has previously made payment to the Subcontractor for such amounts under the Contract Documents;
- e. damage to the property of the Contractor or any Separate Contractor caused by the Subcontractor or any Sub-subcontractor;
- f. failure to carry out the Work in accordance with the Contract Documents;
- g. if the Schedule of Values has been amended, modified, revised or supplemented since the last progress payment, failure by the Subcontractor to provide the Schedule of Values with the next Application for Payment;
- h. failure by the Subcontractor to maintain an up-to-date set of Subcontractors' As-built Drawings and Composite As-built Drawings as provided in the Contract Documents;
- i. filing by any of the Subcontractor's laborers, suppliers, or Sub-subcontractors of a mechanic's lien against the Project Site, and the Subcontractor has not caused the lien to be discharged pursuant to Section 15.24.1;
- j. an Event of Default shall have occurred;

- k. failure of the Subcontractor to perform its obligations under the Contract Documents;
- l. failure of the Subcontractor to provide the Contractor with satisfactory releases and lien waivers;
- m. failure of the Subcontractor to provide appropriate personnel in accordance with the requirements of the Contract Documents, if any;
- n. failure of the Subcontractor to provide appropriate evidence of insurance in conformance with the requirements of the Contract Documents, if any;
- o. failure of the Subcontractor to provide the Contractor with a complete set of Project Documents for any portion of the Work which has been completed and accepted by the Contractor; or
- p. if any part of such payment is attributable to Work which is not performed in accordance with the Contract Documents, the Contractor may (i) disapprove, in whole or in part, an Application for Payment (ii) otherwise decide to withhold payment, in whole or in part, from the Subcontractor, or (iii) nullify the whole or a part of a payment previously made because of subsequently discovered evidence or subsequent observations, in each case to the extent necessary to protect the Owner and/or the Contractor from loss.

15.11.2 If and when the conditions giving rise to the disapproval, withholding or nullification described in Section 15.18.1 hereof have been cured, payment will be made of the applicable withheld amounts, subject to the Contractor's right to withhold payment as may be provided elsewhere in this Agreement.

15.11.3 If the Contractor is permitted under the provisions of this Section 15.18 or any other provisions of this Agreement to disapprove an Application for Payment, in whole or in part, or withhold or nullify any payment to the Subcontractor, and the Contractor does in fact do so, the Subcontractor shall continue to perform the Work despite such action by the Contractor. Any stoppage of the Work by the Subcontractor due to such action by the Contractor shall be a material breach of this Agreement. The Contractor shall not be deemed to be in breach of this Agreement by reason of any such disapproval, withholding or nullification.

15.12 No Waiver

15.12.1 No progress payment made hereunder shall be deemed to constitute CUCF's or the Contractor's final acceptance or approval of the Work to which such progress payment relates or to relieve the Subcontractor of any of its obligations, or waive any of the Contractor's rights or remedies, with respect to such Work.

15.13 Substantial Completion Requisition: Upon written determination by the Construction Manager and the Director that the Work is substantially complete, Subcontractor shall submit to the Construction Manager a requisition for a Substantial Completion payment. Subcontractor must submit the following with such requisition:

- (a) Final verified statement of any and all alleged claims against the Construction Manager and/or CUCF, and any pending dispute resolution procedures in accord with this Agreement, in any way connected with or arising out of this Agreement (including those as to which details may have been furnished pursuant to this Agreement). With respect to each such claim, Subcontractor shall set forth the total amount thereof, the various items of labor and materials included therein, and the alleged value of each item; and if the alleged claim be one for delay, the alleged cause of each such delay, the period or periods of time, giving the dates when Subcontractor claims the performance of the Work or a particular part thereof, was delayed, and an itemized statement and breakdown of the amount claimed for each such delay. With reference to each such claim, the Director, the

Comptroller and the Construction Manager shall have the same right to inspect, and to make extracts or copies of, books, vouchers, records, etc., of Subcontractor or its sub-subcontractors. Nothing contained in this Article is intended to or shall relieve Subcontractor from the obligation of giving timely notice of claims pursuant to other provisions of the Prime Agreement or this Agreement. Subcontractor is warned that unless such claims are completely set forth as herein required, Subcontractor, upon acceptance of the Substantial Completion payment pursuant to this Article, will have waived any such claims arising out of the Work for which payment is requested.

- (b) Final written complete punch list and a date for completion of all required Work. The punch list and completion date are subject to the written acceptance of the Construction Manager and the Director.
- (c) If required, a request for a substantial or final extension of time.

15.14 Substantial Completion Payment: In accordance with the Prime Agreement, the Director shall issue a voucher calling for payment to the Construction Manager of any part or all of the balance due for Work for which payment is requested by Subcontractor, including moneys retained hereunder, less any and all deductions authorized to be made by the Director, under the Prime Agreement or by law, and less twice the amount the Director considers necessary to ensure the completion of the balance of the Work of Subcontractor. No further partial payments shall be made to Subcontractor after the Director determines that the Work is substantially complete, except the Substantial Completion payment and any requisitions for partial payment that were properly filed with the Director prior to the date of Substantial Completion; provided, however, the Director may grant a waiver for further partial payments after the date of Substantial Completion to permit payments for change order work and/or release of retainage and deposits pursuant to Article 25 of the Prime Agreement. Such waiver shall be in writing.

15.15 Final Completion Requisition and Payment

15.15.1 Within twenty (20) days after Final Acceptance by the Director of the Work, the Subcontractor shall submit to the Construction Manager all required certificates and documents, together with its Applications for Payment for the Final Payment, less the amount authorized to be retained for maintenance under Article 25 of the Prime Agreement. A verified statement similar to that required in connection with applications for partial payments shall also be submitted by Subcontractor to the Construction Manager for submittal to the Director. In order for the Construction Manager to make the Final Payment, such Applications for Payment shall contain, and be accompanied by, the information and documents required for the Applications for Payment for progress payments specified in Article 15 of this Agreement and, in addition, the following:

- a. All of the Project Documents relating to the Work;
- b. A certification from Subcontractor that all of the Project Documents for which Subcontractor was responsible have been delivered by Subcontractor to the Construction Manager and are complete and accurate;
- c. Any evidence that the Director and Construction Manager may require in order to demonstrate that all sub-subcontractors, suppliers and laborers have fully discharged their respective obligations and been paid or will be paid in full from the proceeds of the Final Payment;
- d. Written confirmation from the Architect and/or the Contractor's Representative stating that all Subcontract Punch List items have been completed;
- e. The Subcontractor's Final Affidavit and Release of Claims;
- f. A Final Affidavit and Release of Claims executed by all sub-subcontractors and any person who has filed a lien against the Project Site arising out of or relating to the Work;

g. If required by the Contractor, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of this Agreement, to the extent and in such form as may be designated by the Contractor; and

h. Any consents to the Final Payment required of sureties, if any.

15.15.2 Subcontractor must also submit with the final requisition for Work performed any amendments to the final verified statement of any and all alleged claims against the Construction Manager and/or against CUCF, and any pending dispute resolution procedures in accord with this Agreement, in any way connected with or arising out of the Work performed for which payment is requested (including those as to which details may have been furnished pursuant to other provisions of this Agreement) that have occurred subsequent to Substantial Completion, setting forth with respect to each such claim the total amount thereof, the various items of labor and materials included therein, and the alleged value of each such item. With reference to each permissible claim, the Director, the Comptroller and the Construction Manager shall have the same right to inspect, and to make extracts or copies of, the books, vouchers, records, etc., of Subcontractor or its sub-subcontractors, as referred to in other provisions of this Agreement. Nothing contained in this Article, is intended to, or shall, relieve Subcontractor from the obligation of giving timely notice of claims pursuant to other provisions of the Prime Agreement or this Agreement. Subcontractor is warned that unless such claims are completely set forth as herein required, Subcontractor upon acceptance of the final payment will have waived any such claims arising out of the Work performed for which payment is requested.

15.15.3 Upon determining the balance due for Work, including the Work of Subcontractor, for which payment is requested, other than on account of claims, the Director's Representative will prepare and certify, and the Director will approve, a voucher for final payment in that amount less any and all deductions authorized to be made by the Director under the Prime Agreement or by law. Upon the Director thereupon certifying the voucher for final payment for Work performed for which payment is requested following completion and acceptance of the work, and payment to the Construction Manager pursuant to such final voucher, less any deductions authorized to be made by the Director under the Prime Agreement or by law, the Construction Manager shall make final payment to Subcontractor hereunder.

15.15.4 Within fifteen (15) days of the making of the Final Payment, the Subcontractor shall complete and submit to the Contractor a final list of sub-subcontractors and a disbursement record in a form acceptable to the Contractor, reflecting all disbursements made to all sub-subcontractors, and, if required by the Contractor, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances, arising out of the Contract Documents, to the extent and in such form as may be designated by the Contractor.

15.15.5 The making of the Final Payment to Subcontractor shall not constitute a waiver of any claims by the Contractor arising from (a) unsettled liens, (b) defective Work not discovered by the Contractor until after making such Final Payment, (c) the Subcontractor's failure to perform any Work in compliance with the requirements of this Agreement, (d) the terms of any warranties or guarantees required by this Agreement or provided at law or in equity, or (e) claims, demands or damages that are discovered or which arise after Final Payment, or which are covered by any indemnity set forth in this Agreement. The acceptance by the Subcontractor of the Final Payment shall constitute a waiver of all claims by the Subcontractor.

15.16 Right of Offset

15.16.1 In addition to any right of setoff provided by law, all amounts due the Subcontractor shall be considered net of indebtedness of the Subcontractor to the Contractor and its Affiliates, or any damages due to the Contractor hereunder by reason of the Subcontractor's breach of this Agreement and the Contractor may deduct any amounts due or to become due from the Subcontractor to the Contractor from any sums or damages due or to become due from the Contractor to the Subcontractor.

15.17 Mechanic's Liens

15.17.1 The Subcontractor shall promptly pay all costs incurred by it in connection with Work performed by itself and its sub-subcontractors. If the Subcontractor fails to promptly pay any such costs, the Contractor reserves the right to apply any monies due to the Subcontractor towards the payments of such costs. If any sub-subcontractor, or anyone claiming by, through or under Subcontractor or any sub-subcontractor, shall file or cause to be filed any mechanic's lien, notice of pendency, stop order or comparable lien or filing, the Subcontractor shall, within five (5) days after of learning of such filing, whether from the Contractor or any other source, cause the same to be discharged of record, by bonding or otherwise. In the event the Subcontractor shall have failed to effectuate said discharge within such five (5) day period, the Contractor shall have the right to do so, by bonding or otherwise, and, in that event, any expense incurred by the Contractor in connection therewith, including the premiums due for any bond furnished for such discharge and reasonable attorneys' fees and disbursements, shall be paid by the Subcontractor upon demand or, at the option of the Contractor, shall be deducted from any payment then due or thereafter becoming due from the Contractor to the Subcontractor under this Agreement. Notwithstanding any of the foregoing, until such time as such mechanic's lien, notice of pendency, stop order or comparable lien or filing is discharged, the Contractor shall be permitted to withhold from the Subcontractor an equal amount to one hundred fifty (150%) percent of the amount of such claim, plus any reasonable expenses which may be incurred in discharging the lien. The Contractor's rights set forth herein are absolute, and are not dependent upon the ultimate validity of such lien, claim, suit, attachment, notice or encumbrance. Any amounts retained by Contractor, as aforesaid, shall not bear interest and need not be released to Subcontractor until the invalidity of such lien, claim, suit, attachment, notice or encumbrance has been conclusively determined by a tribunal of competent jurisdiction, or has been properly paid and satisfied and the documents evidencing such disposition have been presented to Contractor.

15.18 Subordination of Liens

15.18.1 To the extent not prohibited by law, the Subcontractor hereby subordinates all contractor's, laborer's, mechanic's, materialmen's and similar liens that it may have or acquire hereunder as to the Work to the liens securing payment of sums now or hereinafter borrowed by the Contractor. At the request of the Contractor, the Subcontractor shall execute such additional documents as may be requested from time to time by the Contractor or its lender to give effect to the provisions hereof, and, to the extent not prohibited by law, shall cause Sub-subcontractors and other parties furnishing labor or materials for the Work to subordinate their liens to such aforesaid sums.

15.19 No Security Interests

15.19.1 The Subcontractor shall not enter into any contract for the supply of any component of the Work which purports to grant a security interest or right of repossession to any person or entity respecting the Work or the Project Site, or any portions thereof or chattels placed thereon.

15.20 Subcontractor's Records

15.20.1 The Subcontractor shall maintain accurate records, on a generally accepted accounting basis acceptable to the Contractor, of the items constituting the Subcontract Sum, the hours worked by the Subcontractor's employees and personnel in the performance of the Work, the name and job title of such Subcontractor's employees and personnel, and the compensation paid to it. Upon reasonable notice from the Contractor, these records shall be available at the Subcontractor's office during business hours for review and copying by the Contractor and its representatives and employees. The Subcontractor shall retain these records for a period of ten (10) years after Final Completion or the earlier termination of this Agreement.

15.20.2 In the event that an inspection of the Subcontractor's records reveals any discrepancy or overpayment by the Contractor on account of the Subcontract costs paid pursuant to this Agreement, the Contractor shall, upon discovery of such discrepancy and demand for reimbursement, be repaid an amount equal to such overpayment along with interest thereon from the date of payment to Subcontractor at a rate of nine percent (9%) per annum.

15.21 Superseding Article 35-E of General Business Law of State of New York

15.21.1 It is the intention of the parties that, to the extent not prohibited by Article 35-E of the General Business Law of the State of New York, commonly known as the 'Prompt Payment Act' (the "Prompt Payment Act"), or otherwise expressly provided in this Agreement, the terms and conditions of this Agreement shall supersede the provisions of the Prompt Payment Act in their entirety and, accordingly, (i) the Prompt Payment Act shall not apply to this Agreement, and (ii) the absence of a provision in this Agreement covering any matter addressed in the Prompt Payment Act shall not be construed to mean that the parties have agreed that the applicable provision in the Prompt Payment Act shall govern with respect to that matter.

ARTICLE 16 - DISPUTES AND CLAIMS

16.1 Disputes between the Contractor and the Subcontractor

16.1.1 In consideration of and as a material inducement to the Construction Manager to enter into this Agreement, Subcontractor agrees that any Claim, as defined in Article 1, and any Dispute, as that term is defined in this Article 16, shall be determined in accordance with the provisions of Article 29 of the Prime Agreement and this Article 16. Subcontractor hereby agrees to submit to the dispute resolution procedures set forth therein and herein and that such procedures shall be the exclusive means for determining any Dispute, and consents to be joined in any mediation, arbitration or other alternative dispute resolution proceeding to which the Construction Manager or CUCF is a party concerning any such Dispute.

16.1.2 All claims, controversies or disputes Subcontractor may have in relation to this Agreement or the Work hereunder, including without limitation all claims, controversies or disputes a sub-subcontractor or a supplier to Subcontractor may have in relation to this Agreement, (each a "Dispute"), to the extent permitted by law, shall be resolved exclusively by the procedure set forth in this Article. Without limitation, this procedure covers Disputes concerning: (1) the scope of the Work related to this Agreement, (2) any direction given by CUCF or any governmental agency, (3) the performance by CUCF of its obligations under the Prime Agreement and/or by the Construction Manager of its obligations under this Agreement, (4) the interpretation of the Prime Agreement or of the Contract Documents, (5) if an amount, and what amount, if any, is to be paid for Work or Extra Work or disputed Work performed in connection with this Agreement, (6) every payment to and by Subcontractor, (7) the conformity of the Work with the Prime Agreement and this Agreement or the acceptability and quality of any portion or all of the Work, and (8) any combination of these. Independent of any other provision, time is of the essence to the procedures and to all time requirements set forth in this Article 16. Subcontractor hereby grants CUCF the right to resolve any claim, controversy, or dispute between or amongst CUCF, the Construction Manager and Subcontractor arising under or related to the Prime Agreement, this Agreement, or the Project, including, without limitation, the right of CUCF to resolve any of these by direct payment on behalf of Subcontractor to a sub-subcontractor or supplier to Subcontractor with a corresponding charge against Subcontractor's balance under this Agreement.

16.1.3 The terms of this Agreement shall remain in full force and effect during the period this dispute resolution procedure is being followed with respect to any Dispute. Subcontractor agrees to continue to perform its obligations hereunder during this period in accordance with this Agreement and as directed by the Construction Manager, including, without limitation, any and all matters covered by the Dispute. Failure of Subcontractor to continue without delay to discharge its obligations hereunder, including, without limitation, to perform any Work, disputed Work and Extra Work as directed, shall constitute a material breach of this Agreement and a waiver by Subcontractor of each Dispute then under review in this procedure. Notwithstanding the requirements of Section 16.1, the Subcontractor acknowledges that a breach of its obligations under this Section 16.1 may cause irreparable harm to the Construction Manager and that there may be no adequate remedy at law available to the Construction Manager by reason of such breach. Accordingly, the Construction Manager shall be entitled to mandatory injunctive relief to enforce Subcontractor's performance of its obligations hereunder.

16.1.4 During the investigations integral to this procedure, each party shall provide to the other party copies of all information that each provides in response to any requests for information made by the Executive Director of the Department of Design, Construction and Management of CUNY (the "Executive Director") and by

the Vice Chancellor for Facilities Planning, Construction and Management of CUNY (the "Vice Chancellor").

16.1.5. In any event Subcontractor, either on its own behalf or on behalf of a sub-subcontractor or supplier, fails (a) to submit timely any Notice of Dispute, Dispute Report, Notice of Appeal, or any other information or document required or requested to be provided or (b) to attend without good cause any meeting it is required or requested to attend, pursuant to this procedure, its Dispute shall be deemed waived, and CUCF and the Construction Manager shall be deemed released of all liability for it.

16.1.6. As either may deem appropriate from time to time, the Executive Director and Vice Chancellor each may obtain technical and other expertise for assistance in evaluating the information related to a Dispute. Each may use mediation and select as a neutral mediator a CUNY employee, who is from a department or office not under the supervision of the Executive Director or Vice Chancellor, or hire a neutral mediator, who is not employed by CUCF or CUNY; Subcontractor agrees to pay the Construction Manager a proportionate share of any fee required to be paid by the Construction Manager to CUCF for the services of a mediator not employed by CUCF or CUNY. All mediation sessions shall be confidential and the parties agree that no mediation session may be the sole source of any information used in any other forum, such as litigation of the Dispute.

16.2 Commencement

Within ten (10) days of any act, omission or condition that gives rise to a Dispute, Subcontractor, both on its own behalf and on behalf of its sub-subcontractors and suppliers, must submit to the Construction Manager written notice of its Dispute. In each such notice, Subcontractor must identify (a) the date on which the Dispute arose, and (b) a brief description of it (with the elements specified in (a) and (b) hereof comprising a "Notice of Dispute"). Subcontractor may add other information it deems relevant. This notice requirement shall not replace any other notice requirement set forth in the Prime Agreement or in this Agreement. For cause, the Executive Director may extend in writing by no more than ten (10) business days the period within which Subcontractor may file the Notice of Dispute. The Construction Manager shall submit the Notice of Dispute to the Executive Director and may, in its sole discretion, elect to include or aggregate the Notice of Dispute, in whole or in part, with any dispute submitted by the Construction Manager to the Executive Director. An additional Dispute related in any fashion to an earlier Dispute that has been properly made must be initiated in full conformity with the requirements of this Section 16.2 and will be void unless submitted in such timely manner. The failure to provide written notice of a Dispute within the time provided for in this Section 16.2 shall render Subcontractor's claims with respect to such Dispute void and preclude any later assertion thereof by the Subcontractor or any sub-subcontractor or vendor.

16.2.1 In the event of circumstances arising out of the Work which requires the Construction Manager to perform an investigation related to the Work that may give rise to a Dispute, Claim or potential Claim, and upon request of the Construction Manager, the Subcontractor shall do the following:

- a. Provide full and immediate cooperation to the Construction Manager and its representatives who are charged with investigating the nature and circumstances of the claim or potential claim;
- b. Produce all documents and materials in its possession as requested by the Construction Manager or its representatives;
- c. Require all requested personnel (including those of sub-subcontractors) to provide their assistance with the investigation;
- d. Assist the Construction Manager, experts, attorneys and other representatives of the Construction Manager during the course of the Investigation;
- e. If requested, provide information pertaining to the investigation under oath;
- f. Furnish such other documents or information that may be relevant to the investigation;

g. Assist in the investigation of the Design Professional or any other party performing services or providing work, labor or material in connection with the Project or the Work; and

h. If requested by the Construction Manager, attend any arbitration, mediation or litigation action or proceeding in connection with the Project, without need for the issuance of a subpoena unless one is ordered by a dispute resolution board or court of law.

16.2.2 Under no circumstances shall any of the obligations set forth in this Article 16 affect the Subcontractor's duty to perform the Work in a professional manner. This Article 16 is solely intended to aid the Construction Manager in the investigation of Disputes, Claims or potential Claims arising out of the Work and to facilitate the expeditious resolution of such Claims or potential Claims in order to ensure that the Work is completed in accordance with the Contract Documents.

16.3 Filing the Dispute

Within twenty (20) business days after submission of a Notice of Dispute to the Construction Manager, Subcontractor must submit to the Construction Manager an original and one copy (a) of a full written description of its Dispute, (b) of the resolution it requests, (c) of all documentation related to the Dispute, such as written orders from CUCF and the Construction Manager, and, as to any resolution that includes a payment of any sum, all supporting documentation that specifies the sum at issue and all computations required to arrive at the sum, and (d) of any other findings or decisions the Construction Manager asks CUCF and the Construction Manager to reach (with all of these elements comprising a "Dispute Report"). Subcontractor may add other information it deems relevant. For cause, the Executive Director and the Vice Chancellor may extend in writing by no more than ten (10) business days the period within which the Construction Manager may file the Dispute Report. The Construction Manager shall submit the Dispute Report to the Executive Director and may, in its sole discretion, elect to include or aggregate the Dispute Report, in whole or in part, with any dispute report submitted by the Construction Manager to the Executive Director.

16.4 Investigation, Meetings, and Notice of Appeal

16.4.1. After receipt of the Dispute Report, the Executive Director shall investigate it, may require additional information from CUCF staff, from the Construction Manager and from Subcontractor, and may convene meetings with the Construction Manager and/or Subcontractor, including any relevant sub-subcontractor, and CUCF staff to resolve the Dispute. The Executive Director may resolve the Dispute by negotiating terms acceptable to the Construction Manager, Subcontractor and CUCF (a "Negotiated Resolution"). The Executive Director shall put in writing any Negotiated Resolution to be executed by the Construction Manager, Subcontractor and CUCF. Alternatively, after completing this investigation of the Dispute, the Executive Director may issue written findings and resolve the Dispute unilaterally, without negotiation, in a written decision (a "Unilateral Resolution") that CUCF shall send to the Construction Manager by certified mail, return receipt requested, and to the CUCF staff for implementation. The Construction Manager shall promptly furnish a copy of any Unilateral Determination to Subcontractor. Any Unilateral Resolution rendered by the Executive Director, and not timely appealed by Subcontractor pursuant to the procedure described below, shall be final and binding upon the parties, including Subcontractor and its sub-subcontractors and suppliers upon expiration of the tenth day after the Construction Manager receives any such Unilateral Resolution.

16.4.2. Subcontractor, on its own behalf and on behalf of a sub-subcontractor, may request that the Construction Manager submit an appeal if (a) the Executive Director is unable to reach a Negotiated Resolution or (b) Subcontractor receives a Unilateral Resolution with which Subcontractor disagrees. Subcontractor must commence any such appeal by submitting to the Construction Manager a written notice to be submitted to the Vice Chancellor requesting the Vice Chancellor to resolve the Dispute or to revise the Unilateral Resolution, as the case may be ("Notice of Appeal"). Subcontractor acknowledges that the Prime Agreement required the Construction Manager to file the Notice of Appeal within thirty (30) consecutive calendar days after the Executive Director receives the Dispute Report in the case of a failure to reach a Negotiated Resolution or, within ten (10) consecutive calendar days after the Construction Manager receives any Unilateral Resolution with which Subcontractor disagrees. Consequently, Subcontractor shall submit a Notice of Appeal pursuant to this paragraph to the Construction Manager in sufficient time to enable the Construction Manager to timely submit such Notice of Appeal

to the Vice Chancellor, but in no event less than three (3) business days before the deadline for the Construction Manager to submit the Notice of Appeal to the Vice Chancellor. The Construction Manager shall have no responsibility for failure to timely deliver a Notice of Appeal to the Vice Chancellor if Subcontractor shall fail to deliver same to the Construction Manager within the time required by this paragraph.

16.5 Appeal

After submittal to the Vice Chancellor of the Notice of Appeal, the Vice Chancellor shall investigate the Dispute, may require additional information from CUCF staff, from the Construction Manager and from Subcontractor, and may convene meetings with the Construction Manager and Subcontractor, including any relevant sub-subcontractor, and CUCF staff to resolve the Dispute. The Vice Chancellor may resolve the Dispute by negotiating terms acceptable to the Construction Manager, Subcontractor and CUCF. The Vice Chancellor shall put in writing any such resolution to be executed by the Construction Manager and the CUCF. Alternatively, after completing this investigation of the Dispute, the Vice Chancellor may issue written findings and resolve the Dispute unilaterally, without negotiation, in a written final decision that CUCF shall provide to the Construction Manager and to the Executive Director for implementation, a copy of which shall be promptly furnished by the Construction Manager to Subcontractor. If the Vice Chancellor is unable to resolve the Dispute within thirty (30) consecutive calendar days of receiving the Notice of Appeal or if within ten (10) consecutive calendar days after the Construction Manager receives from the Vice Chancellor a written final decision with which the Construction Manager disagrees, Subcontractor, on its own behalf and on behalf of its sub-subcontractors, agrees that its only remedy shall be an appeal pursuant to Article 78 of the Civil Practice Laws and Rules of the State of New York.

16.6 Claims and Actions Thereon

16.6.1 No claim by Subcontractor against Construction Manager, or, to the extent expressly permitted by the Prime Agreement, against CUCF for damages for breach of contract or compensation for Extra Work shall be made or asserted in any action or proceeding at law or in equity, unless Subcontractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement. The failure of Subcontractor to timely and strictly comply with the requirements of this Article 16, or any of the related requirements of the Prime Agreement, shall be conclusively deemed to be a waiver by Subcontractor of, and will relieve contractor of all responsibility to present or pay for, any such Claim or dispute.

16.6.2 No action or proceeding shall be instituted or maintained by Subcontractor on any claims unless such action or proceeding be commenced within six (6) months after the date of the filing of the final payment voucher pursuant to the Prime Agreement; except that an action or proceeding on a claim for moneys deducted, retained or withheld under the provisions of this Agreement or by law, must be commenced within six (6) months after the date of final payment hereunder or after such moneys become due and payable hereunder, whichever is later, and, further, except that an action or proceeding on a claim based upon the Director's or Construction Manager's exercise of the right to terminate this Agreement for cause must be commenced within six (6) months after the date on which this Agreement is so terminated for cause.

16.7 No claim whatsoever shall be made by Subcontractor against any officer, agent, or employee of the Construction Manager or CUCF for, or on account of, anything done or omitted to be done in connection with this Agreement. Subcontractor further agrees that it shall make no claim against CUCF, its officers, agents or employees, by reason of this Agreement, or any acts or omissions of the Construction Manager; provided however, such restrictions shall not apply to (a) demands filed by Subcontractor pursuant to Article 10.6 of the Prime Agreement, or (b) disputes submitted by Subcontractor pursuant to dispute resolution provisions contained in this Agreement.

ARTICLE 17 - ACCOUNTING REQUIREMENTS

17.1 General Matters

17.1.1 The Subcontractor shall keep complete and detailed accounts and records of all costs including in the Subcontract Sum, which accounts and records shall be adequate to verify the amount and expenditure of such costs and in such form and detail as may be acceptable to CUCF and the Construction Manager. The Subcontractor shall exercise such controls as may be necessary for proper financial management of the Work. The Subcontractor shall maintain a complete set of such accounts and records, including but not limited to the original payrolls or transcripts thereof which Subcontractor and its sub-subcontractors are required to maintain pursuant to Labor Law Section 220, at the Subcontractor's field office and institute appropriate back-up systems (hard copy and computerized) to safeguard the information. Within five (5) days after a written request by the Director, the Contracting Officers, the Comptroller or the Construction Manager, Subcontractor shall produce on the Site of the Work to the requesting party supporting documentation, in both hard copies and computer readable format, for amounts paid or payable by the Contractor, including invoices and payroll records or transcripts thereof, subscribed and affirmed by it as true, and the statements signed by each worker pursuant to this Agreement. In addition, the Subcontractor shall furnish to the Director upon written demand any other information to satisfy the Director that this Agreement and the Labor Law, as to the hours of employment and rates of wages, are being observed. Subcontractor shall maintain the payrolls or transcripts thereof during the term of this Agreement and for six (6) years from the date of completion of the Work of this Agreement.

17.1.2 The Subcontractor shall maintain appropriate internal control and review procedures. The Owner and the Owner's accountants and representatives and/or the Contractor, the Contractor's accountant and representatives shall be afforded access to, and the right to audit, the Subcontractor's Books and Records, and the Subcontractor shall preserve all of the same, during the term of this Agreement and for the period of six (6) years after Final Completion of the Project or the earlier termination of this Agreement, or for such longer period as may be required by law. If any such audit reveals overcharges, the Subcontractor shall, upon demand, repay the Owner and/or the Contractor the costs of such audit and all such overcharges, together with interest earned on such overcharges at the rate of ten (10%) percent per annum from the date said overcharged amount was paid to or on behalf of the Subcontractor. Promptly after the expiration of such six (6) year period, the Subcontractor shall deliver to the Owner the originals of all Books and Records and a copy to the Contractor.

17.1.3 The provisions contained in the sub-subcontract with each sub-subcontractor which are equivalent to the provisions in this Article 17 shall expressly provide that the Owner shall have the same rights that the Subcontractor has under such provisions and that upon the Owner's and/or Contractor's request, the sub-subcontractor shall perform its obligations thereunder directly for the benefit of the Owner, as well as the Contractor.

17.1.4 The Owner shall have the same rights that the Contractor has under Article 17 of this Agreement and upon the Owner's and/or the Contractor's request, the Subcontractor shall perform its obligations thereunder directly for the benefit of the Owner, as well as the Contractor.

17.2 Cost (Tax) Segregation

17.2.1 The Subcontractor acknowledges that the Owner and/or Contractor may classify components of the Project into the tax depreciation lives available pursuant to the Internal Revenue Code. The Subcontractor shall work with the Owner and the Owner's representatives and the Contractor and the Contractor's representatives to provide the required information and all other documents necessary to permit such classification.

17.3 Internal Allocations

17.3.1 The Subcontractor's accounting and cost control systems shall provide appropriate reports as dictated by the Owner and the Contractor. The Subcontractor shall conform its accounting and cost control systems to the Owner and the Contractor's reasonable requirements, including Project-specific requirements and requests, including segregating the Subcontract Sum as appropriate.

ARTICLE 18 - CONTRACTOR'S RESPONSIBILITIES

18.1 Contractor's Requirements

18.1.1 The Contractor shall provide all information reasonably requested by the Subcontractor regarding the Owner's and the Contractor's requirements for the Work with reasonable promptness provided such information is in the Contractor's possession and/or is provided by the Owner to the Contractor.

18.2 Defects in Work

18.2.1 The Contractor shall promptly notify the Subcontractor of any fault or defect in the Work or non-compliance with the Contract Documents of which it becomes aware, and the Subcontractor shall promptly correct such fault or defect or cause the same to be corrected in accordance with the terms of this Agreement; provided, however, that the failure of the Contractor to so notify the Subcontractor of any such fault, defect or non-compliance shall in no event be deemed to waive, modify or otherwise affect any of the Subcontractor's obligations or liability hereunder or impose any liability on the Contractor.

ARTICLE 19 - DEFAULT; TERMINATION

19.1 Default; Termination by the Construction Manager

19.1.1 Without limiting the events that may constitute a default by the Subcontractor, the Subcontractor agrees that each and all of the following shall constitute an Event of Default:

- a. the Subcontractor abandons the Project;
- b. the Subcontractor fails to perform the Work or its obligations to the reasonable satisfaction of Construction Manager and CUCF or to supply the skill, labor, materials, equipment, supervision or other things reasonably required of it to perform in a diligent, efficient, workmanlike, skillful and careful manner or in accordance with the Project Schedule or the provisions of this Agreement as determined by the Owner and/or the Construction Manager in its sole but reasoned judgment;
- c. the Subcontractor repudiates its obligations under this Agreement as determined by the Owner and/or the Contractor in its sole and absolute discretion;
- d. the Subcontractor fails to use an adequate amount or quality of personnel or equipment to complete the Work without delay or fails to perform promptly and timely any of its material rights and obligations;
- e. the Subcontractor causes interference, stoppage, or delay to the Project or to an activity necessary to complete the Project;
- f. the Subcontractor fails to maintain required insurance;
- g. the Subcontractor makes changes to Key Personnel without the Owner's and the Contractor's prior written consent;

h. the Subcontractor fails to provide or utilize the personnel in accordance with the Staffing Plan;

i. the Subcontractor fails to pay Subcontractors properly or promptly or misapplies funds due sub-subcontractors pursuant to the Contract Documents;

j. the Subcontractor certifies or files a document that is found to be intentionally false or incomplete, including, without limitation, any document filed by Subcontractor with the Department of Tax and Finance of the State of New York and any disclosure by Subcontractor with regard to any non-responsibility determination within the five (5) year term preceding the date of the Agreement, which is based on: (A) impermissible contact or other violation of the State of New York State Finance Law §139-j, or (B) the intentional provision of false or incomplete information to a governmental entity;

k. the Subcontractor fails to pay any taxes required in connection with the Work or the Project or pursuant to this Agreement;

l. the Subcontractor fails in CUCF's or the Construction Manager's reasoned judgment to perform any of the obligations, covenants, conditions, or other terms of this Agreement; or

m. the Subcontractor makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudged insolvent or bankrupt, applies for the appointment of a receiver of or trustee for the Subcontractor or any substantial part of its property, commences any proceeding under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or there is commenced against the Subcontractor any such proceeding that remains pending for a period of forty-five (45) days, or the Subcontractor by any act indicates its acquiescence in any such proceeding or to the appointment of a receiver of or trustee for the Subcontractor or any substantial part of its property, or suffers any such receivership or trusteeship to continue undischarged for a period of forty-five (45) days.

19.1.2 In every Event of Default by Subcontractor, in addition to every other right or remedy otherwise provided by the Prime Agreement, by this Agreement or by law or by equity, or by any combination of them, after giving Subcontractor written notice of default and no shorter a period than of three (3) business days within which to cure said default, or, if appropriate, to submit a plan to cure said default subject to the approval of the Construction Manager or, where required by the Prime Agreement, by the Director, except in any event the claimed breach affects the public health or safety, then any duration that CUCF and/or Construction Manager deems sufficient, Construction Manager shall have the right to exercise any and every remedy available to it, in any combination, including without limitation, the following:

(a) require that Subcontractor, at no expense to Construction Manager or to CUCF, perform its rights and obligations outside its ordinary hours of business, including performing its rights and obligations on Saturdays, Sundays, holidays, and in excess of eight (8) hours a day and/or forty (40) hours a week and during additional shifts as necessary to overcome the consequences of any delay attributable to Subcontractor's uncured default; or

(b) attempt to remedy the uncured default on behalf of Subcontractor by whatever means Construction Manager and/or CUCF may deem necessary or appropriate, including, without limitation, correcting, furnishing, performing, or otherwise completing whatever is necessary to effect such a remedy, or any part thereof, by itself or through others, utilizing where appropriate any agreements with any sub-subcontractors or other subcontractors of Construction Manager for the relevant portion of performance, and, without limiting or diminishing any other remedy available to Construction Manager and/or to CUCF, deducting the cost thereof from any monies due or to become due to Subcontractor under any agreement between CUCF and Subcontractor or between the Construction Manager and Subcontractor.

19.1.3 After giving Subcontractor written notice of no fewer than an additional twenty-four (24) hours within which to cure a default (at any time following the expiration of an initial notice-and-cure period) and the Subcontractor fails to cure within such additional period, excepting only the filing of bankruptcy and then only with

leave of the bankruptcy court, Construction Manager may terminate this Agreement in writing, as of the date set forth in such writing, in whole or part, without thereby waiving or releasing or suspending or diminishing any right or remedy against Subcontractor or against any sureties, and by itself or through others commence and complete performance of the Agreement or any portion thereof, and take over for Construction Manager's and CUCF's sole and unencumbered benefit any or all or any combination of the contracts, purchase orders, sub-subcontracts, and materials of the Subcontractor relating to the Agreement, the Work or the Project, all of which the Subcontractor hereby transfers, assigns and sets over to Construction Manager and/or CUCF upon termination for and until the completion of the Agreement and securing CUCF and Construction Manager the payment of their respective costs and other damages under the Prime Agreement and this Agreement, and for the breach hereof; it being intended that, for the stated purposes, CUCF and/or Construction Manager, as appropriate, shall be the assignee of and have a security interest in the property described above to the extent related to the Agreement or the Project. If Subcontractor, at the of the filing of a bankruptcy petition or similar proceeding, is not in compliance with the schedule of Work, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to accept this Agreement and provide adequate assurance of Subcontractor's ability to perform hereunder, may avail itself of such remedies as are reasonably necessary to maintain the schedule of work and the Project schedule.

19.1.4 Notwithstanding any of the foregoing, if the Subcontractor defaults or fails to carry out any of its obligations under the Contract Documents, regardless of whether this Agreement is terminated, and there is no surety, or after a demand has been made, the surety fails to perform its obligations in a timely manner, the Construction Manager may, upon seventy-two (72) hours written notice to the Subcontractor, and without prejudice to any other right or remedy the Construction Manager may have, carry out any or all of the obligations of the Subcontractor, either directly or through others. In such event, Subcontractor and/or the surety, as applicable, will be liable for any additional costs and expenses arising out of or related to the completion of the Work, including without limitation, any administrative costs, attorneys' fees, damages, additional expenses of the Design Professional and the cost of any required corrective work. Contractors for the completion of the subject work are not subject to the approval of Subcontractor. Contractor and any of its completing contractors shall have the right to use any plant, equipment, materials or supplies furnished by Subcontractor for performance of this Agreement until all Work has been completed. The performance of such obligations by the Construction Manager or by others shall not relieve the Subcontractor of any obligation or liability for the Work and shall not operate to waive any right or remedy of the Construction Manager.

19.1.5 Any provisions hereof to the contrary notwithstanding, the Construction Manager shall have the right to terminate this Agreement without cause at any time (i.e., for any reason or no reason) as follows: (i) in the event the Owner terminates the Prime Agreement, this Agreement shall be deemed terminated on the effective date of the termination of the Prime Agreement; and (ii) otherwise, by the Construction Manager giving the Subcontractor at least fifteen (15) days written notice. Upon receipt of notice of such termination, the Subcontractor shall promptly take the following actions: (1) suspend performance of the Work as soon as reasonably practicable or on such later date as may be specified in the termination notice and, on and after such date, take no action which will increase the amounts payable by the Construction Manager under this Agreement or by CUCF under the Prime Agreement; (2) perform such acts as may be necessary to preserve and protect all existing Work, including CUCF's and the Construction Manager's materials and property; (3) cancel all cancelable orders for material and equipment; and (4) assign to CUCF and deliver to the Site or any other location designated by the Director or Construction Manager, any non-cancelable orders for material and/or equipment that is not capable of use except in the performance of this Agreement and the Prime Agreement, and has been specifically fabricated for the sole purpose of this Agreement and the Prime Agreement and not incorporated in the Work.

19.1.6 Upon termination of the Prime Agreement pursuant to Article 47 thereof, Subcontractor shall:

(a) turn over to Construction Manager, for delivery to CUCF, all documents, reports, and materials, and equipment of any nature specifically relating to this Agreement or this Project, and CUCF which may use the same at its sole discretion without additional payment to Subcontractor; and

(b) upon receipt of notice of such termination, take the following actions and complete them within twenty-four (24) hours of the date specified in the notice:

(1) notwithstanding the generality of the foregoing, Stop Work promptly on the date

specified in the notice and on and after that date take no action which will increase the amounts payable by Construction Manager under this Agreement.; and

(2) take such action as may be necessary for the protection and preservation of Construction Manager's materials and property; and

(3) cancel all cancelable orders for material and equipment; and

(4) assign to CUCF, and deliver to the Site or any other location designated by the Construction Manager or the Director any non-cancelable orders for material and/or equipment that is not capable of use except in the performance of this Agreement, and has been specifically fabricated for the sole purpose of this Agreement and not incorporated in the Work.

19.1.7 Upon termination of this Agreement, whether or not the Prime Agreement shall have been terminated by CUCF pursuant to Article 47 of the Prime Agreement, Subcontractor shall:

(a) turn over to Construction Manager all documents, reports, and materials, and equipment of any nature specifically relating to this Agreement or this Project, which may use the same at its sole discretion without additional payment to Subcontractor; and

(b) upon receipt of such notice, take the following actions and complete them within twenty-four (24) hours of the date specified in the notice:

(1) notwithstanding the generality of the foregoing, Stop Work promptly on the date specified in the notice and on and after that date take no action which will increase the amounts payable by Construction Manager under this Agreement.; and

(2) take such action as may be necessary for the protection and preservation of Construction Manager's materials and property; and

(3) cancel all cancelable orders for material and equipment; and

(4) assign to Construction Manager and/or CUCF, and deliver to the Site or any other location designated by the Construction Manager or the Director, as applicable, any non-cancelable orders for material and/or equipment that is not capable of use except in the performance of this Agreement, and has been specifically fabricated for the sole purpose of this Agreement and not incorporated in the Work.

19.1.8 Upon receipt of any such notice of termination of this Agreement from the Contractor, pursuant to Sections 19.1.1 or 19.1.4 hereof, and as a condition precedent to the Contractor's obligation to make any of the aforesaid payments to the Subcontractor required under Section 19.1.4 hereof, the Subcontractor shall:

19.1.9 In addition to any and all other obligations set forth in this Article 19.1, upon receipt of any notice of termination of this Agreement from the Construction Manager, and as a condition precedent to the Construction Manager's obligation to make any payments to the Subcontractor required under this Article 19.1, the Subcontractor shall:

a. Stop performing all Work under this Agreement on the date, and to the extent specified, in the notice of termination;

b. Not enter into any further Sub-subcontracts;

c. At the option of the Construction Manager, the Subcontractor shall assign to the Construction Manager or other person or entity designated by the Construction Manager, all of the Subcontractor's right, title and interest in, to and under those sub-subcontracts designated by the Construction Manager. Simultaneously with any such assignment, and to be memorialized in the assignment instrument, the Construction

Manager shall assume the obligations of the Subcontractor under said sub-subcontracts from and after the effective date of such assignment. Following the effective date of such assignment, the Subcontractor shall have no further liability under such sub-subcontracts and purchase orders other than with respect to matters which occurred prior to such effective date;

d. Except with respect to those sub-subcontracts assigned to the Construction Manager pursuant to subsection (c) of this Section 19.1.9, or unless otherwise directed by the Construction Manager, terminate the sub-subcontracts entered into by the Subcontractor in connection with the Work to the extent that they relate to portions of the Work to be performed subsequent to the date set forth in the notice of termination as the date upon which such termination shall become effective;

e. To the extent required by the Construction Manager and subject to the prior approval of CUCF, use its best efforts to settle all outstanding liabilities and all valid claims arising out of such termination of sub-subcontracts, which approval by the Construction Manager shall be final for all the purposes of this Article 19;

f. As directed by the Construction Manager, transfer title to CUCF in and to, unless already vested in CUCF, and deliver in the manner, at the time, and to extent, if any, directed by the Construction Manager, fabricated or unfabricated parts, work in process, completed Work, supplies, and other material and equipment produced as a part of, or acquired in connection with the performance of, the Work; and all of the documents, materials and other items described in Article 9 hereof;

g. If requested by the Construction Manager, and at the Construction Manager's sole cost and expense, use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Construction Manager, any property of the types referred to herein, provided however, that the Subcontractor shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed, and at a price or prices approved, by the Construction Manager; and provided, further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Construction Manager to the Subcontractor under this Agreement or shall otherwise be credited to the Subcontract Sum or paid in such other manner as the Construction Manager may direct;

h. Complete performance of such part of the Work as shall have been specified in the notice of termination to be completed by the Subcontractor prior to the effective date of such termination; and

i. Prior to the effective date of such termination, take such action as may be necessary, or as the Construction Manager may direct, for the protection and preservation of the property related to the Work and/or the Project which is in the possession of the Subcontractor and in which the Construction Manager or CUCF has or may acquire an interest, the cost of which shall be considered as a part of the cost of the Work.

19.1.10 Within seventy-five (75) calendar days after the date of a termination for convenience pursuant to this Article, Subcontractor shall submit a final requisition for payment and report made by a certified public accountant or a licensed public accountant, and, upon receipt by Construction Manager of such payment as may be due thereupon, as determined in accordance with the terms of the Prime Agreement, and subject to the Contractor's right to withhold payments to the extent permitted under the terms of this Agreement, the Construction Manager shall compensate Subcontractor for that portion of the performance, including reimbursements, and Extra Work satisfactorily performed prior and up to such termination date. Such amount shall be fixed by CUCF, after consultation with the Construction Manager, and shall be subject to audit by the Comptroller. Termination for convenience under this Article shall not give rise to any claim against CUCF, CUNY, the City, the State, DASNY, the Construction Manager, or any combination of them for damages or for compensation in addition to or in excess of that provided hereunder, it being understood that the Subcontractor shall not be entitled to recover anticipated profits on account of the Subcontract Sum or otherwise or the anticipated profits of Sub-subcontractors for portions of the Work unperformed or for materials or equipment unfurnished, nor for reimbursement for losses arising out of matters covered by insurance, all of which claims Subcontractor hereby waives and deems discharged by the payment to Subcontractor required by this Article.

19.1.11 In case of termination for cause of this Agreement in whole or part, Subcontractor shall not be entitled to receive any further payment under this Agreement, except as provided herein. Subcontractor shall not be entitled to receive any such further payment until the Agreement shall be completed wholly to the reasonable satisfaction of CUCF and Construction Manager, at which time, if any unpaid balance of the subcontract price, as adjusted by compensation for Extra Work and determined by CUCF and/or the Construction Manager as of the date of Subcontractor's default, shall exceed the costs and expenses incurred by CUCF and Construction Manager in completing the Agreement and curing Subcontractor's default, such excess shall be paid to Subcontractor. CUCF's and Construction Manager's costs and expenses shall include the cost of completing the Agreement to their respective satisfaction and of performing and furnishing all labor, services, materials, equipment, and other items required therefore, and all losses, damages, reasonable costs and expenses, whether direct or indirect or special or consequential, including, without limitation, reasonable attorneys' and legal fees and disbursements, sustained, incurred or suffered or to be sustained, incurred or suffered by CUCF and/or Construction Manager in relation to any default by Subcontractor. From time to time during the course of CUCF's and/or Construction Manager's completion of the Agreement or such part thereof or at any time thereafter, CUCF and Construction Manager, and each of them, shall certify to the amount of the expense incurred by each of them in the completion of the Agreement or such part thereof, and such certificate shall be final and conclusive upon Subcontractor and admissible as evidence against Subcontractor in any dispute resolution proceeding arising or growing out of this Agreement and in relation to any other agreement between Subcontractor and Construction Manager and/or between Subcontractor and CUCF.

19.1.12 In the event that Construction Manager is terminated, either with or without cause, by Owner, the foregoing provisions shall pertain to the assignment of this Agreement to CUCF from Construction Manager.

19.1.13 CUCF's and Construction Manager's remedies shall be considered separate and cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity.

19.2 No Right of Termination by Subcontractor

19.2.1 Subcontractor agrees that it can be compensated adequately by money damages for any breach of the Agreement which may be committed by the Construction Manager. To the greatest extent permitted by law, therefore, Subcontractor agrees that no default, act or omission of CUCF or the Construction Manager shall constitute a material breach of the Agreement entitling Subcontractor to cancel or rescind the same or to suspend or abandon performance thereof; and Subcontractor hereby waives any and all rights and remedies to which it might otherwise be or become entitled to because of any wrongful act or omission of CUCF or the Construction Manager, saving only Subcontractor's right to seek money damages determinable pursuant to the provisions of Article 29 of the Prime Agreement and this Agreement.

19.2.2 The sole liability of the Contractor to the Subcontractor under this Agreement or otherwise, subject to full and complete performance by the Subcontractor of its obligations under this Agreement, shall be payment of the portion of the Subcontract Fee due hereunder, and the Contractor shall have no liability to the Subcontractor for damages or charges of any kind.

ARTICLE 20 - SUSPENSION OF WORK

20.1 Suspension by the Contractor

20.1.1 The Owner and/or the Construction Manager may, at any time and for any reason, direct the Subcontractor to postpone, delay, or suspend the Project or any part thereof or all or any portion of the services to be performed by the Construction Manager under the Prime Agreement, which may include or affect all or any portion of the Work to be performed by Subcontractor hereunder. The Subcontractor shall resume the performance of the Work upon the date specified in such directive or upon such other date as the Owner and/or the Construction Manager may thereafter specify in writing. In such case, if said suspension materially delays the performance of any portion of the Work so that the Subcontractor will not be able to

achieve any Milestone Event, the Subcontractor shall be entitled to an extension of said Milestone Event for the number of days of such material delay.

20.1.2 With respect to any such postponement, delay, and suspension, Subcontractor shall be entitled only and exclusively to an extension of time, day for day, to cover the duration of the relevant period. Such postponement, delay, or suspension shall not give rise to any cause of action for damages or extra remuneration against CUCF or the Construction Manager, other than that provided for herein.

20.1.3 In the event of any such suspension, the Subcontractor shall, as part of its demobilization activities, secure the Project Site and protect the Work in such a manner that will best preserve the safety and security of the Project Site and the condition of the Work.

ARTICLE 21 - PROPRIETARY INFORMATION

21.1 Proprietary Information.

21.1.1 The Subcontractor hereby irrevocably assigns to the Owner, its successors and assigns, and the Owner shall have, exclusive ownership rights, including, without limitation, all patent, copyright and trade secret rights, with respect to any Proprietary Information. All Proprietary Information shall be the property of the Owner and be considered a work made for hire and shall not be used by the Subcontractor for any purpose other than for the benefit of the Owner; provided, however, the Owner grants the Subcontractor a limited license to use and reproduce applicable portions of the Proprietary Information for use in the execution of the Work, defending itself in any litigation arising from the Work, enforcing any warranty relating to the Work or correcting defective Work, or as may otherwise be reasonably required to protect the Subcontractor's interests with respect to the Work. To the extent that any such copyrightable materials may not, by operation of law, be works for hire, Subcontractor, on its own behalf, on behalf of its sub-subcontractors and suppliers, hereby assigns to CUCF the ownership of copyright in such materials, and CUCF shall have the right to obtain and hold in its own name copyrights, registrations and similar protection which may be available in such items. The Subcontractor shall cooperate fully with the Owner to establish, protect and confirm the Owner's exclusive rights in the Proprietary Information and to enable the Owner to transfer legal title thereto. Upon the expiration or earlier termination of this Agreement or, at any time, upon the Owner's and the Contractor's request, the Subcontractor shall promptly deliver to the Owner and the Contractor all materials containing or derived from Proprietary Information, and all other documents (hard copy or electronic) and materials obtained from, relating to, or developed in the course of performing the Work which are then in possession or control of the Subcontractor. A certificate evidencing compliance with this provision shall, if requested, be provided to the Owner. The Proprietary Information is not intended or represented to be suitable for reuse by the Owner or others on additions to the Project or on any other project. Any such reuse or modification without written verification or adaptation by the Subcontractor, as appropriate for the specific purpose intended, will be at the Owner's sole risk and without liability. Notwithstanding anything contained in this Section 21.1 to the contrary, the foregoing assignment shall not include any (i) inventions created by the Subcontractor in the course of performing the Work that have applications to projects other than the Project or (ii) any inventions created by the Subcontractor prior to the commencement of the Work even if the same were modified or enhanced in the course of performing the Work; provided, however, in no event shall the Subcontractor be entitled to charge the Owner any royalties or other compensation arising from the use of any such invention in connection with the Project and the Owner shall have the right, at any time, to utilize such inventions in connection with any project other than the Project without payment to the Subcontractor of any royalties or other compensation.

21.1.2 Subcontractor further warrants that the property and the materials so assigned do not and shall not contain libelous, plagiarized, injurious or other such matter, and do not and shall not infringe any copyright or violate any other right of any person whatsoever. Subcontractor shall defend with counsel acceptable to the Construction Manager and to CUCF, indemnify and hold the Construction Manager, CUCF, CUNY, the City of New York, the State of New York, and DASNY harmless against any and all claims, damages or expenses, including, but not limited to, attorney's fees and costs of litigation, arising out of a breach of any such warranty pertaining to copyrightable works.

21.2 Confidentiality and Publicity

21.2.1 The Subcontractor acknowledges that the Subcontractor or the Subcontractor's Representatives, in the course of performing the Work, may be exposed to or acquire Confidential Information which is proprietary or confidential to the Contractor, the Owner or its Affiliates or its or their respective clients, or to third parties to whom the Owner and the Contractor owes a duty of confidentiality. The Subcontractor shall hold the Confidential Information in strict confidence and not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose any Confidential Information to third parties or use any Confidential Information for any purpose whatsoever other than the performance of the Work or as may be necessary in connection with an application for a permit, approval or clearance by any governmental authority, and shall advise each of the Subcontractor's Representatives and Sub-subcontractors who may be exposed to the Confidential Information of their obligations to keep such information confidential. Prior to any of the Subcontractor's Representatives or Sub-subcontractors commencing the performance of the Work, and thereafter upon request by the Owner and/or the Contractor, the Subcontractor shall procure from such Subcontractor's Representatives or the personnel of any such Sub-subcontractor a statement and agreement respecting non-disclosure of Confidential Information in such other form as the Owner and/or the Contractor shall prescribe from time to time.

21.2.2 The Subcontractor and the Subcontractor's Representatives and Sub-subcontractors shall not, without the prior written consent of the Owner and the Contractor in each instance, (a) name or refer to the Project for promotional purposes or otherwise, (b) promote, advertise or publicize the Subcontractor's role or involvement with the Project, (c) use in advertising, publicity, brochures, portfolios or otherwise any photograph of the Project or any part thereof or of any employee of the Owner, or the name of the Owner, any Affiliate of the Owner, or any partner, managing director, director, member, officer or employee of the Owner or any such Affiliate, or any trade name, trademark, trade device, service mark or symbol, or any abbreviation, contraction or simulation thereof, owned by the Owner or any of its Affiliates, or (d) represent, directly or indirectly, that any product or any service provided by the Subcontractor has been approved or endorsed by the Owner or any Affiliate of the Owner, or any partner, managing director, director, member, officer or employee of the Owner or any of its Affiliates. In addition to the foregoing restriction on the use of photographs, the Subcontractor shall not use any photograph of the Project or any part thereof unless the Subcontractor and the Owner shall have first executed and delivered an agreement, in the form required by the Owner, governing the use of all such photographs on such terms and conditions as the Owner may require.

21.2.3 The Subcontractor shall not publicize, disclose or allow disclosure of any information about the Project, the Owner or any Affiliate of the Owner, its or their present or former partners, members, managing directors, directors, officers, employees, agents or clients, its or their business or financial affairs, personnel matters, operating procedures, organization responsibilities, marketing matters or policies or procedures, to any reporter, author, producer or similar person or entity, or take any other action seeking to publicize or disclose any such information in any way likely to result in such information being made available to the general public in any form, including books, articles or writings of any other kind, or through any medium, including film, videotape, audiotape, television, radio or the internet.

21.2.4 In the event that the Subcontractor receives a request to disclose all or any part of any Confidential Information under a subpoena or inquiry issued by a court of competent jurisdiction or by a judicial or administrative agency or legislative body or committee, the Subcontractor shall (a) immediately notify the Owner and the Contractor of the existence, terms and circumstances surrounding such request, (b) consult with the Owner and the Contractor on the advisability of taking legally available steps to resist or narrow such request and cooperate with the Owner and the Contractor in any such steps that the Owner considers advisable in order to resist or narrow such request, and (c) if disclosure of the Confidential Information is required or deemed advisable, exercise its best efforts to obtain an order, stipulation or other reliable assurance reasonably acceptable to the Owner and the Contractor that confidential treatment will be accorded to such portion of the Confidential Information to be disclosed.

21.2.5 The Subcontractor acknowledges that a breach of the Subcontractor's obligations under this Article 21 may cause irreparable harm to the Owner and/or the Contractor and that there may be no adequate

remedy at law available to the Owner and the Contractor by reason of such breach. Accordingly, the Owner and the Contractor shall be entitled to injunctive relief to restrain any such breach, whether threatened or actual.

21.2.6 The Subcontractor shall not show the Project in any stage for any purpose, including promotional purposes, without the prior written consent of the Owner and the Contractor.

21.2.7 The provisions of this Article 21 shall survive Final Completion of the Project and any termination or expiration of this Agreement.

21.2.8 The Subcontractor shall review the terms and conditions of this Agreement with any Sub-subcontractor it might retain in the performance of the Work, and shall use all commercially reasonable efforts to obtain the written agreement of such Sub-subcontractor to comply with the terms of this Article 21.

ARTICLE 22 - NOTICE AND DOCUMENTATION OF DELAY DAMAGES AND OTHER DAMAGES:
PRODUCTION OF FINANCIAL RECORDS

22.1 After the commencement of any condition which is causing or may cause a delay in completion of the Work, including conditions for which Subcontractor may be entitled to an extension of time, the following notifications and submittals are required:

22.1.1 Within five (5) Days after the commencement of such condition, Subcontractor must notify the Construction Manager in writing of the existence, nature, and effect of such condition upon the approved Project Schedule and the Work, and must state why and in what respects, if any, the condition is causing or may cause a delay.

22.1.2 If Subcontractor shall claim to be sustaining damages for delay, by reason of any act or omission of the Construction Manager, of CUCF or their respective agents, it shall submit to the Construction Manager within thirty (30) Days from the time such damages are first incurred, and every thirty (30) Days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages. Subcontractor may submit any of the above statements within such additional time as may be granted by the Construction Manager and the Director and the Construction Manager in writing upon written request therefore; failure of Subcontractor to receive from the Director and the Construction Manager a written response to such a request within thirty (30) Days shall be deemed a denial of the request. The failure of Subcontractor to comply fully with the foregoing provisions shall waive and extinguish each such claim, and no right to recover on such claims shall exist thereafter. Damages that Subcontractor may claim in any action arising under or by reason of this Agreement shall not be different from or in excess of the statements made and documentation provided pursuant to this Article.

22.2 Failure of Subcontractor to comply strictly with the requirements of Article 22.1.1, in the discretion of the Construction Manager and/or the Director, may be deemed sufficient cause to deny any extension of time on account of delay arising out of such condition. Failure of Subcontractor to comply strictly with the requirements of Articles 22.1.1 and 22.1.2 shall be deemed a conclusive waiver and extinguishment by Subcontractor of any and all claims for damages for delay arising from such condition, and no right to recover on such claims shall exist thereafter.

22.3 If Subcontractor shall claim to be sustaining damages by reason of any act or omission of the Construction Manager, CUCF or their respective agents, it shall submit to the Construction Manager within thirty (30) Days from the time such damages are first incurred, and every thirty (30) Days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages. Subcontractor may submit any of the above statements within such additional time as may be granted by the Construction Manager and the Director in writing upon written request therefore; failure of Subcontractor to receive from the Construction Manager and the Director a written response to such a request within thirty (30) Days shall be deemed a denial of the request. The failure of Subcontractor to comply fully with the foregoing provisions shall waive and extinguish each such claim, and no right to recover on such claims shall exist thereafter. Damages that Subcontractor may claim in any action arising under or by reason of this Agreement shall not be different from or in excess of the statements made and documentation provided pursuant to this Article.

22.4 In addition to any of the foregoing statements, Subcontractor shall produce, upon notice from the Construction Manager or the Director, for examination at Subcontractor's office by the Construction Manager's Representative and/or the Director's Representative, all of its books of account, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, canceled checks, and all other documents showing all of its acts and transactions in connection with or relating to or arising by reason of this Agreement, and submit itself and persons in its employment, for examination under oath by any person designated by the Construction Manager or the Director to investigate claims made or disputes against the Construction Manager or CUCF under this Agreement. At such examinations, a duly authorized representative of Subcontractor may be present.

22.5 In addition to the statements required under Article 30 of the Prime Agreement and this Article, Subcontractor and/or its sub-subcontractor shall, within thirty (30) days upon written notice from the Construction Manager or the Director, produce for examination at Subcontractor's and/or the sub-subcontractor's office, by a representative of the Construction Manager or the Director, all of its books of account, bid documents, financial statements, accountant work papers, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, canceled checks, and all other documents showing all of its acts and transactions in connection with or relating to or arising by reason of this Agreement. Further, Subcontractor and/or its sub-subcontractor shall submit any person in its employment, for examination under oath by any person designated by the Construction Manager or the Director to investigate claims made or disputes against the Construction Manager and/or CUCF under this Agreement. At such examinations, a duly authorized representative of Subcontractor may be present.

22.6 Unless the information and examination required under Article 22.5 is provided by Subcontractor and/or its sub-subcontractor upon thirty (30) days notice from the Construction Manager or the Director, or upon the Construction Manager and the Director's written authorization to extend the time to comply, time being of the essence, the Construction Manager and CUCF shall be released from all claims arising under, relating to or by reason of this Agreement, except for sums certified by the Director to be due under the provisions of this Agreement. It is further stipulated and agreed that no person has the power to waive any of the foregoing provisions and that in any action or dispute resolution procedure against the Construction Manager or CUCF to recover any sum in excess of the sums certified by the Director or Comptroller to be due under or by reason of this Agreement, Subcontractor must allege in its complaint and prove, at trial or during such dispute resolution procedure, compliance with the provisions of this Article.

22.7 In addition, after the commencement of any action or dispute resolution procedure by Subcontractor arising under or by reason of this Agreement, the Construction Manager and CUCF shall have the right to require Subcontractor to produce for examination under oath, up until the trial of the action or dispute resolution meeting, the books and documents described in Article 22.5 and submit itself and all persons in its employ for examination under oath. If this Article is not complied with as required, then Subcontractor hereby consents to the dismissal of the action or dispute resolution procedure.

ARTICLE 23 - SUPPLIES, LABOR, SERVICES, MATERIALS AND TAX EXEMPTION

23.1 Subcontractor has been advised and acknowledges that CUCF is exempt from payment of Federal, State, local taxes and Sales and Compensating Use Taxes of the State of New York and of cities and counties on all materials and supplies sold to CUCF pursuant to the provisions of the Prime Agreement. These taxes are not to be included in requests for payment. However, this exemption does not apply to tools, machinery, equipment or other property leased by or to the Construction Manager or a Subcontractor, or to supplies and materials which, even though consumed, are not incorporated into the completed Work (consumable supplies), and Subcontractor shall be responsible for and pay any and all applicable taxes, including Sales and Compensating Use Taxes, on such leased tools, machinery, equipment or other property and upon all such unincorporated supplies and materials, which it may include in the relevant requisition for payment.

23.2 Subcontractor agrees to sell and Construction Manager agrees to purchase all supplies and materials, other than consumable supplies, required, necessary or proper for or incidental to the construction of the part of the Project covered by this Agreement. The sum paid under this Agreement for such supplies and materials shall be in full payment and consideration for the sale of such supplies and materials herein.

23.3 The purchase by Subcontractor and, through it, any sub-subcontractors of whatever tier, of the supplies and materials sold hereunder shall be a purchase or procurement for resale and therefore not subject to the New York State or New York City Sales or Compensating Use Taxes or any such taxes of cities or counties. The sale of such supplies and materials by Subcontractor to the Construction Manager for purposes of the Project is exempt from the aforesaid sales or compensating use taxes. With respect to such supplies and materials, Subcontractor, at the request of Construction Manager, shall furnish to Construction Manager such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered assuring to CUCF title to such supplies and materials, free of liens or encumbrances, and Subcontractor shall mark or otherwise identify all such materials as the property of CUCF.

23.4 Ownership of all materials to be sold by Subcontractor to the Construction Manager pursuant to the provisions of the Agreement shall immediately vest in and become the sole property of CUCF upon delivery of such supplies and materials to the Site and prior to its becoming a part of the permanent structure. Notwithstanding such transfer of ownership, Subcontractor shall have the full and continuing responsibility to install such materials and supplies in accordance with the provisions of the Prime Agreement and this Agreement, protect them, maintain them in a proper condition and forthwith repair, replace and make good any damage thereto, theft or disappearance thereof, and furnish additional materials in place of any that may be lost, stolen or rendered unusable, without cost to Construction Manager or CUCF, until such time as the Work covered by the Prime Agreement is fully accepted by CUCF. Such transfer of ownership shall affect in no way any of Subcontractor's obligations hereunder. In the event that, after Construction Manager takes ownership, any of such supplies and materials is rejected as being defective or otherwise unsatisfactory, ownership of all such supplies and materials shall be deemed to have been transferred to Subcontractor.

23.5 The purchase by any sub-subcontractors of whatever tier of supplies and materials to be sold hereunder shall also be a purchase or procurement for resale and therefore not subject to the aforesaid Sales or Compensating Use Taxes, provided that that subcontract agreements provide for the resale of such supplies and materials prior to and separate and apart from the incorporation of such supplies and materials into the permanent construction and that such subcontract agreements are in a form similar to this Agreement with respect to the separation of the sale of materials from the Work and labor, services, consumable supplies and any other matters to be provided, and provided further that the subcontract agreements provide separate prices for (1) materials and (2) all other services and matters. Such separation shall actually be followed in practice, including the separation of payments for supplies and materials from the payments for other Work and labor and other things to be provided.

23.6 The Subcontractors and its sub-subcontractors and materialmen shall obtain any and all necessary Contractor Exempt Purchase Certificates or resale certificates from the appropriate governmental agency or agencies, and furnish a Contractor Exempt Purchase Certificate or resale certificate to all persons, firms or corporations from which they purchase supplies and materials for the performance of the Work covered by this Agreement.

23.7 In the event any of the provisions of this Article 23 shall be deemed to be in conflict with any other provisions of the Prime Agreement or this Agreement, or create any ambiguity, then the provision of this Article shall control.

ARTICLE 24 - MONEY RETAINED AGAINST CLAIMS

24.1 If any claim shall be made by any person, firm or corporation against CUCF, the Construction Manager, Subcontractor or any combination of them: (1) for an alleged loss, damage or injury of the kind referred to in Article 15 of the Prime Agreement which, in the opinion of the Director or the Construction Manager, may not be covered by the general liability insurance policy required to be furnished by Subcontractor hereunder, or, which, together with previously filed claims, is in excess of the amount payable under such policies; or (2) for an infringement of copyrights or patents or use of patented articles, tools, etc.; or (3) for damage claimed to have been caused directly or indirectly by the failure of Subcontractor to perform the Work in strict accordance with this Agreement: the amount of such claim, or so much thereof as he may deem necessary, may be withheld by the Construction Manager as security against such claims, from any money due hereunder, until such time as the commencement of an action thereon would be barred by law or until final adjudication of such action by a court of competent jurisdiction. Subject to the prior approval and at the sole option of the Construction Manager, Subcontractor may substitute other satisfactory security in lieu of the moneys so withheld.

24.2 If no action is commenced upon any such claim within the time limited thereof by law, the Construction Manager, upon written demand by Subcontractor, shall return the amount so withheld without interest.

24.3 If an action on such claim is timely commenced and the liability of the Construction Manager, Subcontractor, or both, shall have been established therein by a final judgment of a court of competent jurisdiction, or if such claim shall have been admitted by Subcontractor to be valid, the Construction Manager shall pay such judgment or admitted claim out of the moneys retained under the provisions of this Article, and return the balance, if any, without interest, to Subcontractor.

24.4 Liens: If any time before or within thirty (30) days after the whole Work herein agreed to be performed is completed and accepted by CUCF, any persons claiming to have performed any labor or furnished any material toward the performance or completion of this Agreement shall file with CUCF any notice as is described in the Lien Law, or any act of the Legislature of the State of New York, the Construction Manager shall retain, from the moneys due or to become due under this Agreement, so much of such moneys as shall be sufficient for the Construction Manager to pay the amount claimed in said notice, together with its reasonable costs of any action or actions, including, without limitation, its legal fees and related costs, brought or that may be brought to enforce such Lien. The moneys so retained shall be held by the Construction Manager until the Lien thereon created by the said act and the filing of the said notice shall be discharged pursuant to law.

ARTICLE 25 - NO DISCRIMINATION

25.1 As required by New York State Labor Law Section 220.e, it is agreed between the parties hereto as follows:

25.1.1 That in the hiring of employees for the performance of Work under this Agreement or any sub-subcontract hereunder, neither Subcontractor, its sub-subcontractor(s) nor any person acting on behalf of Subcontractor or such sub-subcontractor(s), shall by reason of race, creed, color or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the Work to which the employment relates;

25.1.2 That neither Subcontractor, its sub-subcontractors nor any person on its behalf shall, in any manner discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, color or national origin;

25.1.3 That there may be deducted from the amount payable to Subcontractor by the Construction Manager under this Agreement a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

25.1.4 That this Agreement may be canceled or terminated by the Construction Manager and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the Agreement.

25.1.5 The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale, or distribution of materials, equipment, or supplies shall be limited to operations performed within the territorial limits of the State of New York.

25.2 As required by New York City Administrative Code Section 6-108:

25.2.1 It shall be unlawful for any person engaged in the construction, alteration or repair of building or engaged in the construction or repair of streets or highways pursuant to a contract with CUCF or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with CUCF to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

25.2.2 It shall be unlawful for any person or any servant, agent or employee of any person, described in subdivision 25.2.1 above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color or creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

25.2.3 Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this Agreement.

25.2.4 Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

ARTICLE 26 - EQUAL EMPLOYMENT OPPORTUNITY

26.1 This Agreement is subject to, and Subcontractor covenants to comply with, New York State Executive Law Article 15-A and the Rules and Regulations promulgated thereunder ("Article 15-A"), to the extent Article 15-A applies, and other, comparable statutory provisions. By signing this Agreement, the Subcontractor agrees that:

26.1.1 Subcontractor will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

26.1.2 When it sub-subcontracts, Subcontractor will not engage in any unlawful discrimination in the selection of sub-subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status;

26.1.3 Subcontractor will state in all solicitations or advertisements for employees placed by or on behalf of Subcontractor that all qualified applicants will receive consideration for employment without

regard to race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship, or that it is an equal employment opportunity employer;

26.1.4 Subcontractor will send to each labor organization or representative or workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under the relevant statutes; and

26.1.5 Subcontractor will furnish all information and reports including an Employment Report before the award of the contract which are required by the relevant statutes, and will permit access to its books, records and accounts by CUCF and the Construction Manager for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

26.2 Subcontractor understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and noncompliance with the relevant statutes. After a hearing, CUCF may direct the imposition of any or all of the following sanctions:

26.2.1 disapproval of the contractor;

26.2.2 suspension or termination of the contract;

26.2.3 declaring Subcontractor in default; or

26.2.4 in lieu of any of the foregoing sanctions, the Director may impose an employment program.

26.3 Subcontractor agrees to include the provisions of the foregoing paragraphs in every subcontract to which it becomes a party, unless exempted by the relevant statutes, so that such provisions will be binding upon each Subcontractor. Subcontractor will take such action with respect to any subcontract as may be directed by the Director as a means of enforcing such provisions, including sanctions for noncompliance.

26.4 Subcontractor further agrees that it will refrain from entering into any contract or contract modification subject to the relevant statutes with a sub-subcontractor who is not in compliance with their requirements.

ARTICLE 27 - ADDITIONAL PROVISIONS REQUIRED BY PRIME AGREEMENT

27.1 International Boycotts: Subcontractor agrees that neither it nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of Subcontractor or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller and/or the Construction Manager may, at their respective option, render forfeit and void this Agreement. Subcontractor shall comply in all respects, with the provisions of Section 6-114 of the Administrative Code of CUCF and the rules and regulations issued by the Comptroller thereunder.

27.2 MacBride Principles Provisions: Article 64 of the Prime Agreement is hereby expressly incorporated in this Agreement. Subcontractor shall comply with the requirements and obligations of the Construction Manager as set forth in Articles 64 of the Prime Agreement as fully as though each such obligation and requirement was specifically repeated and reiterated hereby.

27.3 Ultra Low Sulfur Diesel Fuel: Articles 65 and 66 of the Prime Agreement are hereby expressly incorporated in this Agreement. Subcontractor shall comply with the requirements and obligations of the Construction Manager as set forth in each and both of Articles 65 and 66 of the Prime Agreement as fully as though each such obligation and requirement was specifically repeated and reiterated hereby.

27.4 VENDEX Questionnaires: Subcontractor shall complete and submit completed VENDEX Questionnaires for itself before this Agreement may be awarded and executed and, as to each sub-subcontractor, before approval is given for a proposed sub-subcontractor. Non-compliance with these submission requirements may result in the disqualification of Subcontractor's proposal, disapproval of a sub-subcontractor, subsequent withdrawal of approval for the use of an approved sub-subcontractor, or the cancellation of this Agreement even after its award. VENDEX Questionnaires must be submitted directly to the Director of Procurement Services at the address set forth in Article 62 of the Prime Agreement. Subcontractor shall submit a completed Business Entity Questionnaire and each sub-subcontractor shall submit completed subcontractor questionnaires. VENDEX Questionnaires, as well as detailed instructions, may be obtained at www.nyc.gov/vendex.

27.5 Participation by Minority-Owned and Women-Owned Business Enterprises: Subcontractor shall meet the requirements for the participation by minority-owned and women-owned business enterprises in this Project, as set forth in Article 68 and Exhibit G of the Prime Agreement, both of which are hereby expressly incorporated herein.

27.6 Incorporation of Provisions in Sub-subcontracts: Each subcontract, in whatever form, between Subcontractor and its sub-subcontractors shall contain the provisions required by the Prime Agreement to be contained in each such sub-subcontract and shall obligate the sub-subcontractor(s) to comply therewith.

ARTICLE 28 - MISCELLANEOUS PROVISIONS

28.1 Assignment

28.1.1 Subcontractor shall not assign or transfer this Agreement or any of its rights or obligations hereunder or any monies due or to become due hereunder, or delegate any of its duties hereunder, or subcontract any portion of the Work, without in each instance obtaining the prior written consent of the Owner and the Contractor. Subject to the provisions of Article 8 hereof, the Subcontractor may sub-subcontract portions of the Work to Sub-subcontractors, at its sole cost and expense. No consent to any such assignment or transfer, and no approval of any Sub-subcontractor, shall under any circumstances operate to relieve the Subcontractor of any of its obligations under this Agreement.

28.2 Royalties and Patents

28.2.1 Subcontractor shall pay all royalties and license fees identified as required in the Contract Documents. The Subcontractor shall defend suits or claims for infringement of any patent rights and shall hold the Contractor, the Owner, the Owner's Representative and the Design Professional harmless from loss on account thereof.

28.3 Affiliations with Sub-subcontractors

28.3.1 Subcontractor shall disclose to the Owner and the Contractor any affiliation, whether due to ownership, personal relationships, or otherwise, between the Subcontractor and any Sub-subcontractors or prospective Sub-subcontractors. Such disclosures shall be made prior to the Subcontractor making any commitment to retain any such Sub-subcontractor.

28.4 Assignment by the Owner

28.4.1 The Contractor shall have the right to assign this Agreement, without the Subcontractor's consent, to any person or entity, including, without limitation, (a) any parent company of Owner, Affiliate or shareholder of the Owner, (b) any person or entity which succeeds to all or substantially all of the Owner's assets and business, (c) any person or entity to which the Owner may lease or sell the Project Site, or (d) Owner's lender for the Project. Upon any such assignment, and the assumption by the assignee thereunder of the Contractor's obligations under this Agreement, the Contractor shall be deemed to be released from any and all liability under this Agreement.

28.5 Governing Law; Choice of Forum

28.5.1 This Agreement and all matters arising in connection with this Agreement shall be governed in all respects by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to principles of conflicts of law. Subcontractor irrevocably consents that any action or proceeding arising out of or connected in any way with this Agreement shall be resolved pursuant to the terms of the Prime Agreement and this Agreement, and, thereafter, shall be heard and determined in a state or federal court of competent jurisdiction in the County, City and State of New York. The parties hereby waive trial by jury in any such action or proceeding. There shall be no consolidation of actions or proceedings or joinder of issues that would result in the removal of the applicable action or proceeding from the court hereinabove provided. If Subcontractor challenges such jurisdiction and such challenge is denied or otherwise withdrawn, Subcontractor shall reimburse to the Owner Contractor, upon demand, the reasonable attorney's fees and expenses incurred by the Contractor and/or the Owner in connection with such challenge.

28.6 Notices

28.6.1 All Notices shall, unless expressly provided otherwise in this Agreement, be in writing and delivered by hand, overnight courier, or registered or certified mail, return receipt requested. Notices to

CUCF shall be sent to CUNY Department of Design, Construction and Management, 555 West 57th Street, 10th Floor, New York, New York 10019, Attention: Robert Lemieux, Executive Director, with a copy to CUNY Department of Design, Construction and Management, 555 West 57th Street, 11th Floor, New York, New York 10019, Attention: Jeffrey Weinstein, Director of Procurement Services, and an additional copy to Office of the General Counsel, CUNY, 535 East 80th Street, New York, New York 10075. Notices to the Construction Manager shall be sent to: F.J. Sciamie Construction Co., Inc., 14 Wall Street, 2nd Floor, New York, New York 10005, Attn: President, with a copy to Zetlin & De Chiara LLP, 801 Second Avenue, New York, New York 10017, Attn: James J. Terry, Esq. Notices to the Subcontractor shall be sent to: , Attn: _____, with a copy to: Attn: _____.

A Notice sent by overnight courier shall be deemed given on the next business day after the day said Notice is delivered to the overnight courier. A Notice sent by registered or certified mail shall be deemed given on the third business day after mailing. The parties may change its address for Notices by sending a Notice thereof to the other party in accordance with this Section 22.6. Attorneys for each party are hereby authorized to sign Notices on behalf of said party.

28.7 No Waiver

28.7.1 No consent or waiver, express or implied, by either party to this Agreement of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by such party hereunder. Unless the Contract Documents specify a time period for notice of a particular claim, failure on the part of any party hereto to complain of any act, omission or breach of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights or remedies of such party or obligations or liability of said other party hereunder. Inspection of the Work or failure of the Owner and/or the Contractor to perform any inspection hereunder shall not release Subcontractor of any of its obligations hereunder.

28.7.2 The failure of the Contractor to insist upon the strict performance of any provision of this Agreement, or the failure of the Contractor to exercise any right, option or remedy hereunder, shall not be construed as a waiver of any such provision, right, option or remedy or as a waiver of any breach thereof. The consent or approval by the Contractor, the Owner or the Design Professional of any act by Subcontractor requiring such consent or approval shall not be construed to waive or render unnecessary the requirement for such consent or approval of any subsequent similar act by the Subcontractor. The payment by the Contractor [and/or the Owner] of any amount due hereunder with knowledge of a breach of any provision of this Agreement shall not be deemed a waiver of such breach nor preclude the Owner's and/or the Contractor's subsequent recovery of damages arising from such breach. No waiver, modification or amendment of any term, condition or provision of this Agreement shall be valid or of any force or effect unless made in writing and signed by the party to be charged therewith. The signing of such writing or writings in any instance or instances shall in no event be construed to constitute a general waiver, abandonment, modification or amendment of any of the terms, conditions or provisions of this Agreement, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings. Any law, usage or custom to the contrary notwithstanding, each party shall have the right at all times to enforce all terms, conditions and covenants hereof in strict accordance herewith, notwithstanding any conduct or custom on the part of either party in refraining from so doing at any other time or times.

28.8 Entire Subcontract; Amendments

28.8.1 This Agreement and the documents incorporated herein by reference constitute the entire understanding of the parties concerning the subject matter hereof and thereof and supersede any and all prior representations and prior negotiations and written or oral agreements between them related to said subject matter, including any request for proposal issued by the Contractor or any proposal submitted by the Subcontractor in connection with the Project. This Agreement may not be amended or modified orally but only by an instrument signed by the party to be charged with enforcement thereof.

28.9 Signs

28.9.1 The Owner and the Contractor shall have the right to place at the Project Site such signs as it may elect. The Subcontractor shall not display on or about the Project Site any sign, trademark or other advertisement, except those signs required by Applicable Laws and, with respect to those required signs, the same shall be of a size required by such Applicable Laws or, if no size is so required, the size of such signs shall be subject to the Owner's and Contractor's prior written approval.

28.10 Provisions Required by Law

28.10.1 It is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in this Agreement shall and is inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

28.11 Third Party Beneficiaries

28.11.1 The Contractor and the Subcontractor specifically acknowledge and agree that it is their intention that (a) the Services contemplated by this Agreement be made available to the Affiliates of the Owner (in addition to the Owner itself), and (b) the Affiliates of the Owner are third party beneficiaries of this Agreement, entitled to enforce the terms and conditions of this Agreement. Except as provided in the immediately preceding sentence or in any indemnification or other provision in this Agreement that benefits the Indemnitees, or as otherwise expressly provided in this Agreement, no provision contained in this Agreement shall confer any benefit upon or grant any rights to any third parties nor give to third parties (in either case, other than the Owner's lender) any claim or right of action beyond such as may legally exist in the absence of any such provision.

28.12 Severability

28.12.1 If any provision of this Agreement is determined to be invalid or unenforceable as against any person or party, the remainder of this Agreement and the applicability of such provision to other persons or parties shall not be affected thereby. Each provision of this Agreement shall, except as otherwise herein provided, be valid and enforceable to the fullest extent permitted by law.

28.13 Rights and Remedies

28.13.1 The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available at law or in equity. Any reference in this Agreement to a specific right or remedy shall not be construed as limiting the Contractor from exercising any other right or remedy it might have, under this Agreement or at law or in equity.

28.14 Non-Liability

28.14.1 In no event shall any members, partners, officers, shareholders, directors, managing directors, employees or Affiliates of the Contractor have any liability to the Subcontractor under this Agreement or otherwise.

28.15 Independent Contractor

28.15.1 The Subcontractor is acting as an independent contractor for all purposes under this Agreement and it is solely responsible for its actions or inactions. No documents, actions or assertions shall be construed to create a partnership, joint venture or other like relationship between the Contractor and the Subcontractor. The Subcontractor is not authorized to enter into any contracts or agreements on behalf of

the Owner and/or the Contractor or to otherwise create any obligations of the Owner and/or the Contractor to third parties.

28.16 Survival

28.16.1 All representations, warranties and indemnities contained in this Agreement, the Subcontractor's obligations to perform all of the Services and all covenants to be performed subsequent to the Final Completion of the Work or the expiration or termination of this Agreement shall survive Final Completion of the Work and the expiration or termination of this Agreement.

28.17 Prior Performance of the Work

28.17.1 The parties acknowledge that, prior to the execution of this Agreement, the Subcontractor and the Contractor may have performed certain of the obligations included within the scope of this Agreement, including the payment of certain sums of money by the Contractor to the Subcontractor. Notwithstanding such performance, it is the intention of the parties that such obligations be included in and governed by the terms of this Agreement. **[CONFIRM]**

28.18 Statute of Limitations

28.18.1 Notwithstanding any provisions of the Contract Documents to the contrary, no applicable statute of limitations shall be deemed to have commenced with respect to any portion of the Work which is not in accordance with the requirements of the Contract Documents, which would not be visible or apparent upon conducting a reasonable investigation and which is not discovered by the Owner and/or the Contractor until after the date which, but for this Section 28.18.1, would be the date of commencement of the applicable statute of limitations; the applicable statute of limitations instead shall be deemed to have commenced on the date of such discovery by the Owner and/or the Contractor.

28.19 Successors and Assigns

28.19.1 This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

28.20 Captions

28.20.1 Captions and titles of the different Articles and Sections in this Agreement are solely for the purpose of aiding in the location of provisions in this Agreement and are not to be considered under any circumstances as parts, provisions or interpretations of this Agreement.

28.21 Covenants

28.21.1 Whenever in this Agreement any words of obligation or duty regarding any party are used, they shall have the same force and effect as those in the form of an express covenant.

28.22 Contractor's Sole and Absolute Discretion

28.22.1 Except as otherwise expressly stated to the contrary in this Agreement, whenever any action or determination is required to be made or taken, as the case may be, by the Contractor, or the consent, approval or satisfaction of the Contractor is required, the making or taking of such action or determination or the granting or withholding of such consent, approval or satisfaction, as the case may be, shall be made, taken, granted or withheld by the Contractor in its sole and absolute discretion.

28.23 Conflicts of Interest

28.23.1 The Subcontractor hereby warrants that it does not now and will not during its performance of the Services have any direct or indirect proprietary or other interest in (a) any patent, system, method, plan or design of construction or in any building procedures that will be recommended or used in the Drawings and Specifications or any other documents for the Project, or (b) any manufacture or fabrication of any materials to be recommended or specified for use in the Project. The Subcontractor further agrees, for itself, its shareholders or members (in the case of closely-held entities), officers, directors, employees, owners, subsidiaries, affiliates, successors and assigns that none of them now have or will hereafter acquire any interest in any Sub-subcontractor which is awarded a Sub-subcontract for Work on the Project and that for a period of one (1) year after the Final Completion of the Work, there shall be no transfer of any interest in the Subcontractor to any such Subcontractor.

28.24 No Prejudice to Drafter

28.24.1 This Agreement is the product of negotiations between the parties and there shall be no presumption construing any provision herein or in the Contract Documents against either party as the purported drafter of such provision.

28.25 Construction of Terms

28.25.1 The language in this Agreement and the other Contract Documents shall be construed according to its customary meaning within the local construction industry. Technical terms not specifically defined in the Contract Documents shall have the meanings given in AIA Document M103, "Glossary of Construction Industry Terms." Technical terms not defined as above and used to describe items of the Work and as so used have a well known technical or trade meaning, shall be held to have such recognized meaning. The Contract Documents may omit modifying words such as "all" and "any" and articles such as "the" and "an", but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. Where "as shown," "as indicated," "as noted" and similar terms are used, it shall be understood that reference to the Drawings is made, unless their use in a sentence clearly implies a different interpretation. Where the term "product," "products," "item," "items" and similar terms are used they shall be understood to include materials, systems and equipment, as applicable. Whenever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders. In all cases where a material, assembly, device, item or part of equipment is referred to in the singular number, it is intended that such reference shall apply to as many such materials, assemblies, devices, items or parts of equipment as are indicated or required to complete the Work. In all instances where a number of days is stated, such days shall be considered "business days" unless otherwise expressly set forth to the contrary. The words "include" or "including" shall be construed as though they were followed by the words "without limitation" or "but not limited to" or words of similar import or meaning. The words "herein", "hereof", "hereunder" and other similar compounds of the words "here" when used in this Agreement shall refer to the entire Subcontract, including the Exhibits and Riders attached hereto, and not to any particular provision or section unless the context requires otherwise.

28.26 Hardware and Software Compliance

28.26.1 The computer equipment, systems, embedded chips, or software contained in the equipment, systems and/or services that the Subcontractor uses to perform the Services shall be current state of the art at the time of delivery, and shall include design and performance features and capabilities to ensure that the hardware, software and/or services will not fail or otherwise be inaccessible and that the software and/or services will not provide invalid or incorrect results. Such hardware or software shall not end, abort, provide invalid or incorrect results, or otherwise fail because of data-sensitive code or operations, including the following: (a) date data recognition; (b) calculations that accommodate same century and multi-century formulas; (c) date values and date data interface values that correctly identify the century; and (d) accurate leap year calculations that will not result in software failures. The Subcontractor shall not substitute any equipment, systems or services used to perform the Services that do not meet the foregoing requirements.

28.27 Capitalized Terms

28.27.1 Terms capitalized in this Agreement shall have the definitions stated herein, or if not defined herein, shall have the definition stated in the Exhibits and Riders attached hereto.

28.28 Execution of this Agreement

28.28.1 It is expressly understood by the parties that delivery by the Contractor of this Agreement for review or execution by the Subcontractor shall confer no rights nor impose any obligations on either party, unless and until both the Contractor and the Construction Manager shall have executed this Agreement, duplicate originals thereof shall have been delivered to the respective parties hereto and, further, until and unless this Agreement has been approved by the Director.

28.29 Counterparts


28.29.1 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which together shall be deemed one and the same instrument.

This Agreement is entered into as of the date and year first above written.

F.J. SCIAME CONSTRUCTION INC.

By: 
Name: Michael Porcella
Title: Executive Vice President

WHITESTONE CONSTRUCTION CORP.

By: 
Name: Steven G. Zick
Title: President

WCC 000959

Exhibit A

Description of Project

The work consists of the procurement and installation of all exterior wall systems, including glazed aluminum and structural glass curtain wall systems, aluminum framed entrances and storefronts, terra cotta wall systems, steel framed window wall, aluminum framed folding wall and channel glass wall assemblies.